

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

UNITED STATES OF AMERICA,)
PLAINTIFF,) CR-18-00258-EJD
VS.) SAN JOSE, CALIFORNIA
RAMESH "SUNNY" BALWANI,) MAY 4, 2022
DEFENDANT.) VOLUME 26
) PAGES 4748 - 5022

TRANSCRIPT OF TRIAL PROCEEDINGS
BEFORE THE HONORABLE EDWARD J. DAVILA
UNITED STATES DISTRICT JUDGE

A P P E A R A N C E S:

FOR THE PLAINTIFF: UNITED STATES ATTORNEY'S OFFICE
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(APPEARANCES CONTINUED ON THE NEXT PAGE.)

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PROCEEDINGS RECORDED BY MECHANICAL STENOGRAPHY
TRANSCRIPT PRODUCED WITH COMPUTER

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10 BY: GEORGE SCAVDIS

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1 SAN JOSE, CALIFORNIA

MAY 4, 2022

2 P R O C E E D I N G S

3 (COURT CONVENED AT 9:07 A.M.)

4 (JURY IN AT 9:07 A.M.)

5 THE COURT: THANK YOU FOR YOUR COURTESY. PLEASE BE
6 SEATED.

7 WE ARE BACK ON THE RECORD IN THE BALWANI MATTER. ALL
8 COUNSEL ARE PRESENT. MR. BALWANI IS PRESENT.

9 OUR JURY AND ALTERNATES ARE PRESENT.

10 GOOD MORNING, LADIES AND GENTLEMEN.

11 FIRST OF ALL, LET ME ASK YOU, DURING OUR BREAK, HAS ANYONE
12 HAD OCCASION TO READ, DISCUSS, WATCH, OR LEARN ANYTHING ABOUT
13 THIS CASE OUTSIDE OF THIS COURTROOM?

14 IF SO, PLEASE RAISE YOUR HAND.

15 THANK YOU AGAIN.

16 I SEE NO HANDS. THANK YOU.

17 LADIES AND GENTLEMEN, THIS MORNING WE ARE GOING TO RESUME
18 THE TESTIMONY OF MR. JHAVERI I THINK IT IS.

19 IS THAT RIGHT, COUNSEL? CROSS-EXAMINATION? YOU'LL
20 CONTINUE WITH YOUR CROSS-EXAMINATION?

21 MR. COOPERSMITH: YES, YOUR HONOR. THANK YOU.

22 THE COURT: GREAT.

23 MY SENSE IS THAT, AFTER SPEAKING WITH COUNSEL, THAT WE
24 SHOULD FINISH HIS TESTIMONY PERHAPS THIS MORNING, PERHAPS BY
25 OUR BREAK. WHEN THAT OCCURS, WHENEVER THAT IS, WE WILL THEN

09:08AM 1 RETURN TO THE PREVIOUS WITNESS, MS. BENNETT.

09:08AM 2 THAT'S THE PLAN THEN, COUNSEL?

09:08AM 3 MR. COOPERSMITH: THAT IS MY UNDERSTANDING, YES.

09:08AM 4 MR. SCHENK: YES, YOUR HONOR.

09:08AM 5 THE COURT: GREAT. THANK YOU.

09:08AM 6 BEFORE WE BEGIN, I WANTED TO CALL ATTENTION TO A

09:08AM 7 HOUSEKEEPING MATTER THAT I NEGLECTED TO MENTION. THERE ARE TWO

09:09AM 8 EXHIBITS. I THINK IT'S 1776.

09:09AM 9 IS THAT CORRECT, MR. BOSTIC?

09:09AM 10 MR. BOSTIC: YES, YOUR HONOR.

09:09AM 11 THE COURT: EXHIBIT 1776, WHICH WAS ADMITTED, AS

09:09AM 12 WELL AS EXHIBIT 1944, 1944, WHICH WAS AN EMAIL WITH AN

09:09AM 13 ATTACHMENT.

09:09AM 14 1776 IS THE SAME AS THE ATTACHMENT TO 1944, AND THIS IS

09:09AM 15 THE ROGER PARLOFF ARTICLE.

09:09AM 16 I JUST WANT YOU TO KNOW THOSE TWO CAME IN. AND I'M SURE

09:09AM 17 YOU'RE ON TOP OF THAT, YOU NOTICED THAT. I SEE SOME HEADS

09:09AM 18 NODDING.

09:09AM 19 BUT I NEGLECTED TO TELL YOU THAT THOSE EXHIBITS, THEY WERE

09:09AM 20 AN ANOMALY. IT WAS THE SAME EXHIBIT, BUT THEY WERE INTRODUCED

09:09AM 21 IN DIFFERENT FORMATS.

09:09AM 22 ANY COMMENTS FROM THE COURT REGARDING LIMITATIONS OR HOW

09:09AM 23 THOSE EXHIBITS MAY BE USED APPLY TO BOTH OF THOSE EXHIBITS. SO

09:10AM 24 I WANTED TO CLARIFY THAT FOR YOU.

09:10AM 25 MR. BOSTIC, ANYTHING FURTHER ON THAT?

09:10AM 1 MR. BOSTIC: NO, YOUR HONOR. THANK YOU.

09:10AM 2 MR. COOPERSMITH: NO, YOUR HONOR. THANK YOU.

09:10AM 3 THE COURT: ALL RIGHT. THANK YOU VERY MUCH.

09:10AM 4 SHOULD WE ASK THE WITNESS TO RETURN THEN?

09:10AM 5 MR. COOPERSMITH: YES, YOUR HONOR.

09:10AM 6 THE COURT: OKAY. LET'S DO THAT. THANK YOU.

09:10AM 7 SIR, IF YOU WOULD RESUME THE STAND. AGAIN, MAKE YOURSELF

09:10AM 8 COMFORTABLE. ADJUST THE CHAIR AND THE MICROPHONE AS YOU NEED.

09:10AM 9 I'LL REMIND YOU THAT YOU'RE STILL UNDER OATH.

09:10AM 10 WHEN YOU ARE COMFORTABLE, WOULD YOU PLEASE STATE YOUR NAME

09:10AM 11 AGAIN, PLEASE.

09:10AM 12 THE WITNESS: NIMESH JHAVERI. N-I-M-E-S-H, LAST

09:10AM 13 NAME JHAVERI, J-H-A-V-E-R-I.

09:11AM 14 THE COURT: THANK YOU. COUNSEL.

09:11AM 15 (**GOVERNMENT'S WITNESS, NIMESH JHAVERI, PREVIOUSLY WAS**

09:11AM 16 **SWORN.**)

09:11AM 17 MR. COOPERSMITH: THANK YOU, YOUR HONOR.

09:11AM 18 **CROSS-EXAMINATION (RESUMED)**

09:11AM 19 BY MR. COOPERSMITH:

09:11AM 20 Q. AND, MR. JHAVERI, I THINK LAST TIME YOU CONFIRMED YOU WERE

09:11AM 21 FULLY VACCINATED, AND SO IF YOU'RE COMFORTABLE TAKING OFF YOUR

09:11AM 22 MASK, THAT WOULD BE FINE.

09:11AM 23 A. THANK YOU.

09:11AM 24 Q. AND I'LL DO THE SAME.

09:11AM 25 AND, OF COURSE, WELCOME BACK TO SAN JOSE.

09:11AM 1 A. THANK YOU.

09:11AM 2 Q. YOU'RE WELCOME.

09:11AM 3 SO, MR. JHAVERI, I KNOW IT'S BEEN A COUPLE OF WEEKS, SO

09:11AM 4 JUST TO GET ORIENTED AGAIN AND CONTINUE WHERE WE LEFT OFF, I

09:11AM 5 JUST WANT TO GO BACK TO AN EXHIBIT THAT WE WERE TALKING ABOUT

09:11AM 6 THE LAST TIME. OKAY?

09:11AM 7 I THINK YOU CAN SEE IT ON YOUR SCREEN.

09:11AM 8 YOU SHOULD HAVE BINDERS UP THERE. AM I RIGHT ABOUT THAT?

09:11AM 9 YOU ALSO HAVE PAPER BINDERS?

09:11AM 10 A. YES. THERE'S NOTHING ON MY SCREEN.

09:11AM 11 Q. YES. IT WILL BE IN A SECOND. I JUST HAVE TO TELL MY

09:11AM 12 ASSISTANT THE NUMBER.

09:11AM 13 SO IT'S EXHIBIT 1891. YOU REMEMBER THIS WAS AN EMAIL

09:11AM 14 STRING THAT YOU EXCHANGED WITH MR. BALWANI ON AUGUST 12TH AND

09:12AM 15 13TH OF 2014?

09:12AM 16 A. YES, SIR.

09:12AM 17 Q. OKAY. MY INITIAL QUESTION IS THERE'S A REFERENCE -- AND I

09:12AM 18 KNOW WE DISCUSSED THIS THE LAST TIME THAT WE MET -- THERE'S A

09:12AM 19 REFERENCE TO GOLD STORES.

09:12AM 20 DO YOU SEE THAT?

09:12AM 21 OR GOLD LEVEL STORES?

09:12AM 22 A. YES, SIR.

09:12AM 23 Q. AND WE TALKED ABOUT WHAT THAT WAS; RIGHT?

09:12AM 24 A. CORRECT.

09:12AM 25 Q. AND IT IS THE THERANOS STORES THAT HAVE A -- BASICALLY TWO

09:12AM 1 ROOMS?

09:12AM 2 A. THAT'S CORRECT.

09:12AM 3 Q. A ROOM FOR THE BLOOD DRAW?

09:12AM 4 A. A ROOM FOR THE BLOOD DRAW, AND ALSO A SEPARATE BATHROOM.

09:12AM 5 Q. THE BATHROOM IS THE SECOND ROOM?

09:12AM 6 A. THAT'S CORRECT.

09:12AM 7 Q. AND DO YOU REMEMBER THERE WAS SOME DIALOGUE BETWEEN YOU

09:12AM 8 AND MR. BALWANI ABOUT HOW, IN ONE OF THE CONTRACTS THAT WE

09:12AM 9 LOOKED AT LAST TIME, THERE WAS A REQUIREMENT THAT 40 PERCENT OF

09:12AM 10 THE STORES BE GOLD STORES; RIGHT?

09:12AM 11 A. THAT'S CORRECT.

09:12AM 12 Q. OKAY. AND YOU REFERENCE THAT IN THIS EMAIL; RIGHT?

09:12AM 13 A. YES.

09:12AM 14 Q. AND I JUST WANT TO MAKE SURE WE'RE ALL LOOKING AT THE SAME

09:13AM 15 THING, AND I JUST WANT TO SHOW YOU SOME PHOTOS OF WHAT A GOLD

09:13AM 16 STORE LOOKS LIKE, BUT YOU CAN CONFIRM.

09:13AM 17 THE FIRST EXHIBIT I WOULD LIKE TO SHOW IS AN EXHIBIT

09:13AM 18 ALREADY IN EVIDENCE, AND THAT'S EXHIBIT 4858.

09:13AM 19 MR. ALLEN, IF YOU COULD PUT UP PAGE 43 OF EXHIBIT 4858.

09:13AM 20 AGAIN, IT'S ALREADY IN EVIDENCE.

09:13AM 21 AND YOU'LL SEE IT ON THE SCREEN, MR. JHAVERI.

09:13AM 22 OKAY. DO YOU SEE THE ROOM THAT IS PICTURED IN

09:13AM 23 EXHIBIT 4858?

09:13AM 24 A. I DO.

09:13AM 25 Q. AND THAT'S THE INSIDE OF WHAT A GOLD STORE IS SUPPOSED TO

09:13AM 1 LOOK LIKE; CORRECT?

09:13AM 2 A. YES. THIS IS SIMILAR. THIS IS ACTUALLY A PICTURE OF THE

09:13AM 3 PALO ALTO STORE.

09:13AM 4 Q. RIGHT.

09:13AM 5 A. SO IT WOULD BE SIMILAR TO THIS TYPE OF A SET UP.

09:13AM 6 Q. OKAY. THE OTHER STORES WOULD FOLLOW THIS SAME FORMAT?

09:13AM 7 A. THAT'S CORRECT.

09:13AM 8 Q. OKAY. AND IF YOU COULD GO TO PAGE 44, MR. ALLEN.

09:13AM 9 JUST MORE PICTURES OF THE PALO ALTO STORE; CORRECT?

09:14AM 10 A. THAT'S CORRECT.

09:14AM 11 Q. AND IT'S THE THERANOS SPACE WITHIN THE PALO ALTO STORE;

09:14AM 12 CORRECT?

09:14AM 13 A. THAT'S RIGHT. THIS IS A SEPARATE AREA WITHIN THE STORE

09:14AM 14 NEXT TO THE PHARMACY THAT IS WHAT WE CALL THERANOS WELLNESS

09:14AM 15 CENTERS, ONLY FOR THERANOS SERVICES.

09:14AM 16 Q. THANK YOU.

09:14AM 17 AND THEN ONE MORE PICTURE ON THIS EXHIBIT, PAGE 45. THANK

09:14AM 18 YOU.

09:14AM 19 AND THEN THIS IS A PICTURE OF THE SEPARATE BATHROOM;

09:14AM 20 CORRECT?

09:14AM 21 A. THAT'S CORRECT.

09:14AM 22 Q. OKAY. AND IN ORDER TO HAVE THIS TYPE OF STORE SUCH AS IT

09:14AM 23 EXISTED IN PALO ALTO THAT YOU'VE JUST CONFIRMED, THAT WOULD BE

09:14AM 24 THE CONSTRUCTION THAT WOULD HAVE TO OCCUR IN THE STORE TO

09:14AM 25 ACCOMPLISH THIS FORMAT; RIGHT?

09:14AM 1 A. YES. WE WOULD HAVE TO HAVE EXTENSIVE CONSTRUCTION TO HAVE
09:14AM 2 THIS TYPE OF A SEPARATE ROOM PLUS BATHROOM.
09:14AM 3 Q. RIGHT. OKAY.
09:14AM 4 AND WE TALKED ABOUT THE CONSTRUCTION ISSUES I THINK THE
09:14AM 5 LAST TIME THAT WE MET.
09:14AM 6 DO YOU REMEMBER THAT?
09:14AM 7 A. I DO.
09:14AM 8 MR. COOPERSMITH: OKAY. YOUR HONOR, I HAVE ANOTHER
09:14AM 9 EXHIBIT THAT I DON'T THINK IS IN THE BINDER, BUT I CAN HAND IT
09:14AM 10 UP.
09:14AM 11 IF I CAN APPROACH THE WITNESS?
09:15AM 12 THE COURT: SURE.
09:15AM 13 MR. COOPERSMITH: AND I'LL GIVE THE COURT A COPY
09:15AM 14 (HANDING.)
09:15AM 15 THANK YOU.
09:15AM 16 Q. SO, MR. JHAVERI, I'VE SHOWN YOU EXHIBIT 20631.
09:15AM 17 DO YOU HAVE THAT IN FRONT OF YOU?
09:15AM 18 A. I DO.
09:15AM 19 Q. AND THAT'S A PHOTO OF THE OUTSIDE OF THE THERANOS SPACE
09:15AM 20 WITHIN THE PALO ALTO STORE; CORRECT?
09:15AM 21 A. THAT'S CORRECT.
09:15AM 22 Q. OKAY.
09:15AM 23 AND, YOUR HONOR, IF WE -- I WOULD OFFER 20631.
09:15AM 24 MR. SCHENK: NO OBJECTION.
09:15AM 25 THE COURT: IT'S ADMITTED, AND IT MAY BE PUBLISHED.

09:15AM 1 (DEFENDANT'S EXHIBIT 20631 WAS RECEIVED IN EVIDENCE.)

09:15AM 2 BY MR. COOPERSMITH:

09:15AM 3 Q. OKAY. AND SO WHAT WE'RE SEEING HERE IS THE WALGREENS

09:15AM 4 STORE, AND IN FACT, THE COSMETICS SECTION THERE ON THE RIGHT,

09:15AM 5 THAT'S JUST PART OF THE REGULAR WALGREENS STORE; RIGHT?

09:15AM 6 A. THAT'S CORRECT.

09:15AM 7 Q. AND THEN THIS IS THE ENTRANCE TO THE THERANOS GOLD STORE;

09:16AM 8 CORRECT?

09:16AM 9 A. THAT'S RIGHT.

09:16AM 10 Q. AND THEN IT HAS THE THERANOS BRAND THERE AT THE TOP;

09:16AM 11 RIGHT?

09:16AM 12 A. THAT'S CORRECT.

09:16AM 13 Q. OKAY. YOU CAN PUT THAT ASIDE, MR. JHAVERI. THANKS.

09:16AM 14 OKAY. LET'S GO BACK TO EXHIBIT 1891. THAT'S THAT EMAIL

09:16AM 15 STRING.

09:16AM 16 A. YES.

09:16AM 17 Q. AND I JUST WANT TO MAKE SURE I UNDERSTAND YOUR TESTIMONY,

09:16AM 18 MR. JHAVERI. IN THE DOCUMENT YOU SAY, "WE ARE GOING TO TOUCH

09:16AM 19 2,000 STORES IN 2015 AND WOULD LIKE TO MAKE SURE WE PLACE 2

09:16AM 20 ROOMS IN THE STORES THAT WE WANT TO SELECT FOR GOLD LEVEL."

09:16AM 21 DO YOU SEE THAT?

09:16AM 22 A. YES, I DO.

09:16AM 23 Q. AND IF I UNDERSTAND YOUR TESTIMONY FROM A COUPLE OF WEEKS

09:16AM 24 AGO, YOU'RE SAYING THAT YOUR REFERENCE TO THE 2,000 STORES IN

09:16AM 25 THE EMAIL IS A REFERENCE TO THE WALGREENS WELL EXPERIENCE

09:16AM 1 STORES; IS THAT YOUR TESTIMONY, SIR?

09:16AM 2 A. THAT'S CORRECT.

09:16AM 3 Q. OKAY.

09:16AM 4 YOUR HONOR, I WOULD LIKE TO --

09:17AM 5 WELL, LET ME JUST SHOW YOU ANOTHER EXHIBIT FIRST, IT'S

09:17AM 6 28033, WHICH SHOULD BE IN YOUR BINDER.

09:17AM 7 THE COURT: IS THERE A PAGE?

09:17AM 8 MR. COOPERSMITH: YES, YOUR HONOR. IT'S PAGE 174,

09:17AM 9 AND SPECIFICALLY PAGE 174, LINE 19, THROUGH PAGE 176, LINE 6.

09:17AM 10 THE WITNESS: WOULD YOU SAY THE NUMBER AGAIN,

09:17AM 11 PLEASE?

09:17AM 12 BY MR. COOPERSMITH:

09:17AM 13 Q. SURE. IT'S EXHIBIT 28033.

09:17AM 14 A. OKAY. I HAVE IT.

09:18AM 15 Q. THANK YOU. AND IF YOU COULD GO TO PAGE 174.

09:18AM 16 A. YES, SIR.

09:18AM 17 Q. THIS IS TESTIMONY THAT YOU GAVE UNDER OATH IN A PRIOR

09:18AM 18 PROCEEDING?

09:18AM 19 A. YES, THAT'S WHAT IT LOOKS LIKE.

09:18AM 20 Q. RIGHT. AND IN THAT PROCEEDING, YOU REMEMBER RAISING YOUR

09:18AM 21 RIGHT HAND AND TAKING AN OATH TO TELL THE TRUTH, JUST LIKE YOU

09:18AM 22 DID IN COURT --

09:18AM 23 A. YES, SIR.

09:18AM 24 Q. -- HERE; RIGHT?

09:18AM 25 AND YOU WERE TELLING THE TRUTH; RIGHT?

09:18AM 1 A. YES.

09:18AM 2 Q. BECAUSE YOU KNEW THAT WAS IMPORTANT?

09:18AM 3 A. YES.

09:18AM 4 Q. RIGHT. YOU WERE ASKED QUESTIONS ABOUT THIS VERY SAME

09:18AM 5 EMAIL ON PAGE 174, STARTING ON LINE 19?

09:19AM 6 A. THAT'S CORRECT.

09:19AM 7 MR. COOPERSMITH: YOUR HONOR, I'D LIKE TO PLAY A

09:19AM 8 VIDEOTAPE FOR THE JURY OF MR. JHAVERI'S TESTIMONY THAT IS GOING

09:19AM 9 TO COVER PAGE 174, LINE 19, THROUGH 176, LINE 6.

09:19AM 10 THE COURT: COUNSEL?

09:19AM 11 MR. SCHENK: NO OBJECTION.

09:19AM 12 THE COURT: DO YOU HAVE THIS MARKED OUT ALREADY?

09:19AM 13 MR. COOPERSMITH: THERE'S A VIDEO CLIP OF EXACTLY

09:19AM 14 THAT TESTIMONY THAT I JUST REFERENCED.

09:19AM 15 THE COURT: OKAY.

09:19AM 16 MR. COOPERSMITH: AND, MR. ALLEN, IF YOU COULD PLAY

09:19AM 17 THE -- ONE MOMENT, YOUR HONOR.

09:19AM 18 (VIDEOTAPE DEPOSITION OF MR. JHAVERI PLAYED IN OPEN COURT

09:20AM 19 OFF THE RECORD.)

09:21AM 20 BY MR. COOPERSMITH:

09:21AM 21 Q. OKAY. AND, MR. JHAVERI, IN THAT VIDEO CLIP THAT WE JUST

09:21AM 22 LISTENED TO, YOU NEVER TALK ABOUT WELL EXPERIENCE; CORRECT?

09:21AM 23 A. THAT'S CORRECT. WHAT --

09:21AM 24 Q. THAT'S MY QUESTION, SIR.

09:21AM 25 A. YES, THAT'S CORRECT.

09:21AM 1 Q. YOU DON'T MENTION WELL EXPERIENCE?

09:21AM 2 A. I DO NOT.

09:21AM 3 Q. OKAY. LET'S GO BACK TO AN EXHIBIT THAT WE WERE LOOKING AT

09:21AM 4 LAST TIME, WHICH IS EXHIBIT 1884. AND THIS IS THE DOCUMENT

09:21AM 5 THAT WE WERE LOOKING AT THE LAST TIME, WHICH IS A PARTNERSHIP

09:21AM 6 MEETING MINUTES AND POWERPOINT FROM AUGUST 11TH, 2014.

09:22AM 7 DO YOU SEE THE FIRST PAGE OF IT ON THE SCREEN?

09:22AM 8 A. I DO.

09:22AM 9 Q. AND JUST TO REORIENT HERE, THIS WAS, IN THE COVER EMAIL,

09:22AM 10 AN EMAIL FROM PATTY HAWORTH.

09:22AM 11 DO YOU SEE THAT?

09:22AM 12 A. YES, I DO.

09:22AM 13 Q. AND SHE WORKS FOR WALGREENS?

09:22AM 14 A. CORRECT.

09:22AM 15 Q. AND SHE SENT THE PARTNERSHIP MEETING MINUTES AND THE SLIDE

09:22AM 16 DECK TO THE GROUP WHO WERE INVOLVED WITH THE PARTNERSHIP AT

09:22AM 17 THERANOS AND WALGREENS; IS THAT CORRECT?

09:22AM 18 A. THAT'S CORRECT.

09:22AM 19 Q. AND I THINK WE DISCUSSED QUITE A LOT OF THIS, BUT I WANT

09:22AM 20 TO MOVE TO THE POWERPOINT. WE'VE LOOKED AT THE MINUTES LAST

09:22AM 21 TIME.

09:22AM 22 IN PARTICULAR, IF YOU COULD TURN TO, IT'S RIGHT AFTER

09:22AM 23 PAGE 16, MR. ALLEN. I DON'T KNOW IF THE PAGES ARE NUMBERED,

09:22AM 24 BUT THEY START WITH THE POWERPOINT DECK RIGHT AFTER PAGE 16.

09:23AM 25 IT WOULD BE THE NEXT PAGE. ONE MORE PAGE, MR. ALLEN.

09:23AM 1 RIGHT. THANK YOU.

09:23AM 2 AND THIS IS I GUESS NUMBERED PAGE 17.

09:23AM 3 DO YOU SEE THAT IS THE FIRST PAGE OF THIS EXHIBIT THAT IS

09:23AM 4 THE BEGINNING OF THE POWERPOINT SLIDE DECK?

09:23AM 5 A. I DO.

09:23AM 6 Q. SO WITH THESE MEETINGS, IN ADDITION TO MS. HAWORTH KEEPING

09:23AM 7 THE MINUTES, THERE WAS ALSO A POWERPOINT PREPARED; RIGHT?

09:23AM 8 A. NOT ALL OF THE TIME, BUT WHENEVER WE NEEDED TO DISCUSS ANY

09:23AM 9 DETAILS, THINGS OF THAT NATURE.

09:23AM 10 SO WHETHER IT WAS THE WALGREENS TEAM, THE THERANOS TEAM,

09:23AM 11 OR IN COLLABORATION WITH EACH OTHER, WE WOULD PRESENT SOME

09:23AM 12 SLIDES ON SOME DETAILS.

09:23AM 13 Q. OKAY. AND IN THIS CASE THAT HAPPENED AT THE AUGUST

09:23AM 14 MEETING; RIGHT?

09:23AM 15 A. YES.

09:23AM 16 Q. AND MS. HAWORTH SENT THE POWERPOINT SLIDE DECK AFTER THE

09:23AM 17 MEETING?

09:23AM 18 A. THAT'S CORRECT.

09:23AM 19 Q. SO WE'RE SEEING THE FIRST PAGE.

09:23AM 20 IF YOU COULD GO TO PAGE 20, MR. ALLEN.

09:24AM 21 A. YES.

09:24AM 22 Q. OKAY. AND THIS HAS THE THERANOS EXPERIENCE SURVEY

09:24AM 23 SUMMARY.

09:24AM 24 DO YOU SEE THAT?

09:24AM 25 A. THAT'S CORRECT.

09:24AM 1 Q. AND IT SAYS THERE WERE 650 UNIQUE RESPONDENTS; RIGHT?

09:24AM 2 A. THAT'S CORRECT.

09:24AM 3 Q. AND THOSE WERE THE PEOPLE WHO WERE GETTING THEIR BLOOD

09:24AM 4 COLLECTED AT WALGREENS STORES; CORRECT?

09:24AM 5 A. THAT'S CORRECT.

09:24AM 6 Q. IN PALO ALTO AND ARIZONA?

09:24AM 7 A. YEAH. I DON'T KNOW WHICH STORES WERE INVOLVED IN THIS,

09:24AM 8 BUT, YES, THESE WERE THE 650 RESPONDENTS THAT RECEIVED THEIR

09:24AM 9 BLOOD DRAW THROUGH A THERANOS SERVICE AND THEN THEY WERE GIVEN

09:24AM 10 THAT IPAD THAT I SPOKE ABOUT A COUPLE WEEKS AGO.

09:24AM 11 Q. RIGHT. AND THAT WAS FOR A PERIOD OF JULY 2ND THROUGH

09:24AM 12 AUGUST 4TH; RIGHT?

09:24AM 13 A. THAT'S CORRECT.

09:24AM 14 Q. BECAUSE THAT WAS THE PERIOD JUST PRIOR TO THE PARTNERSHIP

09:24AM 15 MEETING?

09:24AM 16 A. THAT'S CORRECT.

09:24AM 17 Q. RIGHT. AND AS I SAID, 650 UNIQUE RESPONDENTS, AND THEN IT

09:24AM 18 HAS THE AVERAGE QUALITY/EXPERIENCE SCORES.

09:24AM 19 DO YOU SEE THAT?

09:24AM 20 A. I DO.

09:24AM 21 Q. AND THEY'RE ALL REALLY GOOD; RIGHT?

09:24AM 22 A. THEY ARE.

09:24AM 23 Q. AND THEN IF YOU GO TO THE NEXT PAGE, PAGE 21, THEN THERE

09:25AM 24 ARE SOME BAR GRAPHS, YOU KNOW, THAT FURTHER BREAK THAT DOWN;

09:25AM 25 RIGHT?

09:25AM 1 A. YES.

09:25AM 2 Q. AND THE OVERALL EXPERIENCE, THE BAR GRAPH SHOWS THERE WERE

09:25AM 3 MANY MORE 5'S THAN PEOPLE WHO RATED THE OVERALL EXPERIENCE 1,

09:25AM 4 2, 3 OR 4.

09:25AM 5 DO YOU SEE THAT?

09:25AM 6 A. THAT'S CORRECT.

09:25AM 7 Q. AND IN FACT, NO ONE RATED THE EXPERIENCE 0; RIGHT?

09:25AM 8 A. IT WAS ONE PERSON IT LOOKS LIKE.

09:25AM 9 Q. ONE PERSON RATED THE EXPERIENCE 0; RIGHT?

09:25AM 10 A. CORRECT.

09:25AM 11 Q. SO THAT 1 PERSON OUT OF 650 MUST HAVE HAD A BAD

09:25AM 12 EXPERIENCE; RIGHT?

09:25AM 13 A. YEAH. I DON'T KNOW.

09:25AM 14 Q. AND 556 PEOPLE RATED IT A 5; RIGHT?

09:25AM 15 A. THAT'S RIGHT.

09:25AM 16 Q. OKAY. AND JUST TO BE CLEAR, 5 IS THE BEST THAT THEY COULD

09:25AM 17 RATE THE EXPERIENCE; RIGHT?

09:25AM 18 A. THAT'S CORRECT. 0 TO 5 IS THE SCALE, 5 BEING THE BEST

09:26AM 19 ACROSS ALL OF THESE DIMENSIONS THAT WE ASKED QUESTIONS OF.

09:26AM 20 Q. THANK YOU. AND THEN THERE ARE OTHER METRICS. CHECK IN

09:26AM 21 PROCESS, PEOPLE RATED THAT, FOR THE MOST PART, 5'S, OR MORE

09:26AM 22 PEOPLE RATED THAT 5; RIGHT?

09:26AM 23 A. THAT'S CORRECT.

09:26AM 24 Q. AND SAME WITH LOCATING THERANOS; RIGHT?

09:26AM 25 A. CORRECT.

09:26AM 1 Q. AND THEN FACILITIES.

09:26AM 2 DO YOU SEE THAT?

09:26AM 3 A. THAT'S RIGHT.

09:26AM 4 Q. AND IF YOU GO TO THE NEXT PAGE, PAGE 22, SAMPLE COLLECTION

09:26AM 5 PROCESS, 558 PEOPLE OF THE 650 GAVE IT A 5; RIGHT?

09:26AM 6 A. THAT'S CORRECT.

09:26AM 7 Q. AND THIS WAS AT A TIME WHEN THERE WERE APPROXIMATELY

09:26AM 8 40 PERCENT VENIPUNCTURE, AROUND 60 PERCENT FINGERSTICK; RIGHT?

09:26AM 9 A. APPROXIMATELY, CORRECT.

09:26AM 10 Q. OKAY. THEN SKILLED TECHNICIAN, DO YOU SEE THAT?

09:26AM 11 A. YES.

09:26AM 12 Q. OKAY. LET'S GO TO THE NEXT PAGE, PAGE 23.

09:26AM 13 AND THIS IS A PIE CHART. AND THE QUESTION IS, "WHERE DO

09:27AM 14 YOU TYPICALLY GET YOUR PRESCRIPTIONS FILLED?"

09:27AM 15 DO YOU SEE THAT?

09:27AM 16 A. YES.

09:27AM 17 Q. AND THE GREEN, 53 PERCENT, IS WALGREENS; RIGHT?

09:27AM 18 A. THAT'S CORRECT.

09:27AM 19 Q. AND THEN I GUESS IT WOULD BE THE REMAINING 47 PERCENT ARE

09:27AM 20 AT THESE OTHER COMPETITORS OF WALGREENS; RIGHT?

09:27AM 21 A. THAT'S CORRECT.

09:27AM 22 Q. LIKE CVS?

09:27AM 23 A. YES.

09:27AM 24 Q. AND WAL-MART?

09:27AM 25 A. YES.

09:27AM 1 Q. OR COSTCO; RIGHT?

09:27AM 2 A. YES.

09:27AM 3 Q. AND SO FORTH?

09:27AM 4 A. YES.

09:27AM 5 Q. OKAY. AND THEN THE NEXT GRAPH OR PIE CHART ON PAGE 24, IT

09:27AM 6 SAYS, "BASED ON YOUR RECENT VISIT, WHAT IS THE LIKELIHOOD THAT

09:27AM 7 YOU WILL RETURN TO A THERANOS WELLNESS CENTER?"

09:27AM 8 DO YOU SEE THAT?

09:27AM 9 A. I DO.

09:27AM 10 Q. AND THERE ARE 82 PERCENT IN THIS PIE CHART WHO SAID THEY

09:27AM 11 WOULD DEFINITELY COME BACK; RIGHT?

09:27AM 12 A. THAT'S RIGHT.

09:27AM 13 Q. AND THEN 17 PERCENT SAID THEY WOULD LIKELY -- THEY WERE

09:27AM 14 LIKELY TO RETURN; RIGHT?

09:27AM 15 A. THAT'S CORRECT.

09:27AM 16 Q. AND THEN ONLY 1 PERCENT SAID THAT THEY ARE NOT SURE IF

09:28AM 17 THEY WILL RETURN; RIGHT?

09:28AM 18 A. THAT'S RIGHT.

09:28AM 19 Q. AND THAT'S REALLY GOOD?

09:28AM 20 A. YES, THAT'S GOOD.

09:28AM 21 Q. OKAY. AND THEN IF YOU GO TO THE NEXT PAGE, YOU SEE THAT

09:28AM 22 THERE'S A -- I WON'T READ ALL OF THESE, BUT THERE'S A SECTION

09:28AM 23 ON SOME COMMENTS THAT PEOPLE HAD ABOUT THEIR EXPERIENCE AT THE

09:28AM 24 THERANOS COLLECTION CENTER AT WALGREENS.

09:28AM 25 DO YOU SEE THAT?

09:28AM 1 A. YES, SIR.

09:28AM 2 Q. AND THEN THAT'S PAGE 25.

09:28AM 3 NOW, IF WE FLIP TO PAGE 41 OF THE SLIDE DECK.

09:28AM 4 THIS IS A SECTION OF THE POWERPOINT SLIDES THAT SAY

09:28AM 5 "DIAGNOSTIC TESTING -- THERANOS PARTNERSHIP PROGRAM MEASURES OF

09:28AM 6 SUCCESS (SMART GOALS)."

09:29AM 7 DO YOU SEE THAT?

09:29AM 8 A. YES.

09:29AM 9 Q. AND THEN IF YOU GO TO THE NEXT PAGE, IT ACTUALLY DEFINES

09:29AM 10 WHAT SMART GOALS ARE; RIGHT?

09:29AM 11 A. CORRECT.

09:29AM 12 Q. I THINK WE WERE BOTH HAVING TROUBLE REMEMBERING WHAT THAT

09:29AM 13 WAS, BUT NOW WE SEE IT; RIGHT?

09:29AM 14 A. YES.

09:29AM 15 Q. AND THIS IS -- I THINK YOU SAID THIS IS NOT SOMETHING THAT

09:29AM 16 JUST EXISTS IN WALGREENS, BUT IT IS A COMMON BUSINESS -- A

09:29AM 17 COMMON WAY IN BUSINESS TO SORT OF MEASURE METRICS; IS THAT

09:29AM 18 CORRECT?

09:29AM 19 A. IT'S A -- YES, IT'S A GUIDELINE OF HOW WE LOOK AT GOALS

09:29AM 20 FOR BUSINESS OR FOR HR OR DETERMINING ANYTHING THAT WE'RE

09:29AM 21 TRYING TO ACHIEVE.

09:29AM 22 Q. OKAY. SO IF YOU GO TO THE NEXT PAGE, WHICH IS 43, NOW

09:29AM 23 WE'RE -- THERE'S THE BEGINNING OF THE DIFFERENT CATEGORIES AND

09:29AM 24 SOME COMMENTS ABOUT THEM.

09:29AM 25 DO YOU SEE THAT?

09:29AM 1 A. I DO.

09:29AM 2 Q. AND THEN THE FIRST ONE IS OPERATIONAL?

09:29AM 3 A. YES.

09:29AM 4 Q. AND IT SAYS, "ACHIEVE ACCEPTABLE LABOR MODEL," AND THEN

09:30AM 5 THE SUCCESS CRITERIA IS "20 STORES WITH WALGREENS EMPLOYED

09:30AM 6 PHLEBOTOMIST/HEALTH GUIDE BY 3/31/15."

09:30AM 7 RIGHT?

09:30AM 8 A. THAT'S RIGHT.

09:30AM 9 Q. SO THAT DATE OF 3/31/15, THAT WOULD BE SEVEN MONTHS LATER

09:30AM 10 COMPARED TO THE TIME THAT THIS IS BEING PRESENTED AT THE

09:30AM 11 MEETING IN AUGUST '14?

09:30AM 12 A. THAT'S RIGHT.

09:30AM 13 Q. OKAY. AND THAT'S WHERE WALGREENS WOULD START EMPLOYING

09:30AM 14 THE PHLEBOTOMIST, AT LEAST FOR THE 20 STORES MENTIONED THERE?

09:30AM 15 A. THAT'S RIGHT.

09:30AM 16 Q. OKAY. AND THEN IT HAS ANOTHER CATEGORY OF PATIENT

09:30AM 17 EXPERIENCE.

09:30AM 18 DO YOU SEE THAT?

09:30AM 19 A. YES, I DO.

09:30AM 20 Q. AND THE GOAL IS "LIKELIHOOD TO COME BACK BY 8/31/15."

09:30AM 21 AND THE GOAL IS GREATER THAN 90 PERCENT?

09:30AM 22 A. THAT'S CORRECT.

09:30AM 23 Q. AND ACTUALLY, FROM THE PIE CHARTS THAT WE ALREADY LOOKED

09:31AM 24 AT, THE PROGRAM WAS ALREADY THERE FOR THE STORES THAT WERE

09:31AM 25 OPENED AT THAT TIME; RIGHT?

09:31AM 1 A. YEAH, I THINK WE WERE 82 OR 83 ALREADY LIKELY TO COME
09:31AM 2 BACK -- OR I DON'T REMEMBER. SORRY.
09:31AM 3 98 PERCENT.
09:31AM 4 Q. 98 PERCENT; RIGHT?
09:31AM 5 SO THAT GOAL HAD ALREADY BEEN MET AS OF AUGUST OF '14;
09:31AM 6 RIGHT?
09:31AM 7 A. THAT'S RIGHT.
09:31AM 8 Q. EVEN THOUGH THE DEADLINE WAS AUGUST 31ST, '15?
09:31AM 9 A. CORRECT.
09:31AM 10 Q. OKAY. AND THEN IT HAS -- I WON'T READ ALL OF THESE, BUT
09:31AM 11 IT HAS THE OTHER GOALS UNDER PATIENT EXPERIENCE.
09:31AM 12 DO YOU SEE THAT?
09:31AM 13 A. YES, I DO.
09:31AM 14 Q. OKAY. IF YOU GO TO THE NEXT PAGE, THERE'S A GOAL UNDER
09:31AM 15 THE FINANCIAL SECTION TO ACHIEVE 15 PATIENTS PER STORE PER DAY
09:31AM 16 FOR A STORE THAT HAS BEEN OPENED AT LEAST THREE MONTHS BY AT
09:31AM 17 LEAST AUGUST 31ST, '15.
09:31AM 18 DO YOU SEE THAT?
09:31AM 19 A. YES.
09:31AM 20 Q. I THINK WE LOOKED AT IT LAST TIME AND I THINK WE'LL SEE,
09:32AM 21 BUT THE PATIENT NUMBERS HAD ACTUALLY BEEN GROWING; RIGHT?
09:32AM 22 A. YES, THE PATIENT NUMBERS HAD BEEN GROWING, AND THE STORE
09:32AM 23 COUNT HAD ALSO BEEN GROWING, SO THAT WAS A GOOD THING.
09:32AM 24 WE WERE SEEING GROWTH NOT JUST ON THE TOTAL NUMBER OF
09:32AM 25 PATIENTS, BUT PER AVERAGE PER STORE PER DAY, WHICH IS GOOD AS

09:32AM 1 WELL.

09:32AM 2 Q. OKAY. AND THEN ON THE SAME PAGE THERE'S A GOAL TO DEAL

09:32AM 3 WITH SOME I.T. ISSUES.

09:32AM 4 DO YOU SEE THAT?

09:32AM 5 A. YES, I DO.

09:32AM 6 Q. AND YOU REMEMBER THAT THE I.T. ISSUES, THE INTEGRATION

09:32AM 7 BETWEEN THERANOS AND WALGREENS, THIS WAS, YOU KNOW, SOMETHING

09:32AM 8 THAT MAYBE WAS HARDER THAN IT FIRST APPEARED; IS THAT FAIR?

09:32AM 9 A. IT WAS. THERE WAS CERTAIN THINGS THAT WE NEEDED TO DO.

09:32AM 10 WE WANTED TO MAKE SURE THAT THERE WAS AN INTERNET

09:32AM 11 CONNECTION, DSL AS IT REFERS TO, THAT WAS PRIVATE, THAT WE CAN

09:32AM 12 HAVE UNINTERRUPTED. SO THAT WAS ONE.

09:32AM 13 OTHER THINGS THAT WE HAD TO DO WAS TO INTEGRATE INTO OUR

09:32AM 14 WALGREENS PLATFORM SO THAT THEY COULD ACCESS THE THERANOS CHECK

09:33AM 15 IN PROCESS.

09:33AM 16 SO THERE WERE THINGS THAT WE WERE DOING FROM BOTH A

09:33AM 17 WALGREENS STANDPOINT, AS WELL AS FROM A THERANOS STANDPOINT

09:33AM 18 THAT WE HAD TO GET COMPLETED, JUST TO MAKE SURE THE EXPERIENCE

09:33AM 19 WAS CORRECT AND THAT WE HAD, AS BEST AS POSSIBLE, A GROUP

09:33AM 20 INTEGRATION, A SEAMLESS PROCESS.

09:33AM 21 Q. AND THERE WERE A LOT OF PEOPLE WORKING ON THAT PARTICULAR

09:33AM 22 PROJECT; RIGHT?

09:33AM 23 A. ON BOTH SIDES.

09:33AM 24 Q. ON BOTH SIDES. IS THIS A SILICON VALLEY MEETS CHICAGO

09:33AM 25 TYPE OF THING?

09:33AM 1 A. I CAN'T ANSWER THAT.

09:33AM 2 BUT I WILL TELL YOU THAT WE HAD FOLKS ON BOTH SIDES THAT

09:33AM 3 WERE CONTINUING TO WORK ON FIGURING OUT THE TECHNOLOGY.

09:33AM 4 Q. OKAY. LET'S GO A LITTLE FURTHER INTO THE SLIDE DECK.

09:33AM 5 AND THEN IF YOU GO TO PAGE 46, YOU SEE THERE'S A PATIENT

09:33AM 6 EXPERIENCE SECTION?

09:33AM 7 A. YES, SIR.

09:33AM 8 Q. AND THAT DEALS WITH THINGS LIKE CHECK IN TIME; RIGHT?

09:33AM 9 A. THAT'S CORRECT.

09:33AM 10 Q. AND THE OTHER CATEGORIES OR GOALS THAT WERE MENTIONED

09:34AM 11 THERE, THOSE ARE ALSO PART OF THE PATIENT EXPERIENCE; RIGHT?

09:34AM 12 A. THAT'S RIGHT.

09:34AM 13 Q. OKAY. AND THEN THE NEXT PAGE IS PATIENT (NON-EXPERIENCE),

09:34AM 14 AND THAT'S PAGE 47.

09:34AM 15 DO YOU SEE THAT?

09:34AM 16 A. YES.

09:34AM 17 Q. AND SO THE PATIENT VOLUME AND THE PERCENTAGE OF VENOUS

09:34AM 18 DRAWS THAT ARE LISTED THERE, NET NEW VERSUS EXISTING PATIENTS,

09:34AM 19 THESE ARE IN THE CATEGORY OF PATIENTS, BUT NOT PART OF THE

09:34AM 20 PATIENT EXPERIENCE; IS THAT CORRECT?

09:34AM 21 A. YES, THAT'S HOW WE CATEGORIZED IT AT THE TIME, YES.

09:34AM 22 Q. OKAY. AND THEN DO YOU SEE WHERE IT SAYS PERCENT VENOUS

09:34AM 23 DRAWS?

09:34AM 24 A. YES.

09:34AM 25 Q. AND THE GOAL IS -- I'M SORRY. THE GOAL IS PERCENT VENOUS

09:34AM 1 DRAWS.

09:34AM 2 AND THEN THE SUCCESS CRITERIA IS LESS THAN OR EQUAL

09:34AM 3 10 PERCENT VENOUS DRAWS BY AUGUST 31ST, 2015.

09:34AM 4 AM I READING THAT RIGHT?

09:35AM 5 A. THAT'S CORRECT.

09:35AM 6 Q. OKAY. YOU CAN PUT THAT EXHIBIT ASIDE, MR. JHAVERI. THANK

09:35AM 7 YOU.

09:35AM 8 OKAY. IF YOU COULD PULL UP, MR. ALLEN, JUST FOR

09:35AM 9 MR. JHAVERI, EXHIBIT 20229.

09:36AM 10 A. I HAVE IT.

09:36AM 11 Q. OKAY. AND DO YOU SEE THIS IS AN EMAIL STRING WHERE IN THE

09:36AM 12 BOTTOM EMAIL MR. BALWANI SENT AN EMAIL TO YOU AND OTHERS ON

09:36AM 13 AUGUST 14TH, AND THEN YOU RESPOND WITHIN WALGREENS ON

09:36AM 14 AUGUST 15TH, 2014.

09:36AM 15 DO YOU SEE THAT?

09:36AM 16 A. I DO.

09:36AM 17 Q. AND THIS WAS IN CONNECTION WITH THE PARTNERSHIP BETWEEN

09:36AM 18 WALGREENS AND THERANOS; RIGHT?

09:36AM 19 A. YES.

09:36AM 20 Q. AND THAT YOU WERE CONVEYING INFORMATION TO YOUR COLLEAGUES

09:36AM 21 AT WALGREENS TO TELL THEM SOME INFORMATION ABOUT THE

09:36AM 22 PARTNERSHIP; RIGHT?

09:36AM 23 A. THAT'S CORRECT.

09:36AM 24 Q. AND YOU WERE TRYING TO CONVEY THAT INFORMATION ACCURATELY?

09:36AM 25 A. YES.

09:36AM 1 Q. AND YOU WERE DOING THAT ON AN EMAIL IN THIS CASE; CORRECT?

09:36AM 2 A. CORRECT.

09:36AM 3 Q. AND THIS WAS A COMMON WAY THAT YOU COMMUNICATED

09:36AM 4 INFORMATION TO YOUR COLLEAGUES WITHIN WALGREENS; CORRECT?

09:36AM 5 A. YES.

09:36AM 6 Q. AND YOU -- WHEN YOU SENT AN EMAIL SUCH AS THIS, IF YOU

09:36AM 7 EVER NEEDED TO REFER BACK TO IT, WALGREENS HAD A SYSTEM WHERE

09:36AM 8 YOU COULD GO BACK AND DO THAT TO REVIEW THE INFORMATION IF YOU

09:37AM 9 WANTED TO; IS THAT RIGHT?

09:37AM 10 A. THAT'S CORRECT.

09:37AM 11 MR. COOPERSMITH: YOUR HONOR, WE OFFER 20229.

09:37AM 12 MR. SCHENK: NO OBJECTION.

09:37AM 13 THE COURT: IT'S ADMITTED. IT MAY BE PUBLISHED.

09:37AM 14 (DEFENDANT'S EXHIBIT 20229 WAS RECEIVED IN EVIDENCE.)

09:37AM 15 BY MR. COOPERSMITH:

09:37AM 16 Q. OKAY. MR. JHAVERI, JUST TO GO TO THE BOTTOM EMAIL FROM

09:37AM 17 MR. BALWANI. HE WROTE, "TODAY'S DATA. I THOUGHT I WOULD SHARE

09:37AM 18 TODAY'S DATA WITH YOU. THESE VISITS ARE FOR PAYING CUSTOMERS

09:37AM 19 (NO COUPONS OR OTHER FREE VISITS)."

09:37AM 20 DO YOU SEE THAT?

09:37AM 21 A. I DO.

09:37AM 22 Q. AND THEN ABOVE THAT YOU THEN SENT THIS EMAIL TO

09:37AM 23 BRAD FLUEGEL AND BRAD WASSON; IS THAT RIGHT?

09:37AM 24 A. YES, THAT'S CORRECT.

09:37AM 25 Q. OKAY. AND CAN YOU JUST REMIND US, WHO ARE MR. FLUEGEL AND

09:37AM 1 MR. WASSON LISTED ON THIS EMAIL AT THE TIME?

09:37AM 2 A. AT THE TIME STEWART WASSON, OR ALSO KNOWN AS BRAD WASSON,

09:37AM 3 WAS MY DIRECT MANAGER; AND THEN BRADLEY FLUEGEL WAS HIS DIRECT

09:38AM 4 MANAGER.

09:38AM 5 Q. OKAY. AND DO YOU KNOW WHO BRAD FLUEGEL REPORTED TO?

09:38AM 6 A. BRAD FLUEGEL REPORTED TO ALEX GOURLAY, WHO WAS THE ACTING,

09:38AM 7 OR THE CO-COO OF WALGREENS BOOTS ALLIANCE.

09:38AM 8 Q. SO WHEN YOU GET TO THE LEVEL OF BRAD FLUEGEL, YOU'RE

09:38AM 9 GETTING INTO THE UPPER ECHELONS OF WALGREENS MANAGEMENT; IS

09:38AM 10 THAT CORRECT?

09:38AM 11 A. THAT'S CORRECT.

09:38AM 12 Q. AT THE NATIONAL LEVEL?

09:38AM 13 A. THAT'S CORRECT.

09:38AM 14 Q. SO LET'S JUST LOOK AT WHAT YOU SAID. YOU WROTE IN THE TOP

09:38AM 15 EMAIL, "HI BRAD -- JUST WANTED YOU TO KNOW THE REAL PROGRESS WE

09:38AM 16 HAVE MADE WITH THERANOS. THERE IS STILL MUCH WORK TO BE

09:38AM 17 DONE... HOWEVER, ATTACHED ARE THE NUMBERS FROM WEDNESDAY -- 142

09:38AM 18 PATIENTS TOTAL FOR ONE DAY -- ALMOST 5 PATIENTS PER STORE.

09:38AM 19 SINCE WE LAST PRESENTED TO YOU AND THE EXEC TEAM IN MARCH, HERE

09:38AM 20 ARE SOME HIGHLIGHTS FOR YOU."

09:38AM 21 DO YOU SEE THAT?

09:38AM 22 A. YES.

09:38AM 23 Q. AND THEN -- SO YOU'RE REPORTING THE PROGRESS; RIGHT?

09:38AM 24 A. THAT'S RIGHT.

09:38AM 25 Q. AND THEN YOUR -- IN THE DATA, YOU'RE SHOWING THAT BETWEEN

09:39AM 1 FEBRUARY AND JULY, THE NUMBER OF STORES WENT FROM 3 TO 31;

09:39AM 2 RIGHT?

09:39AM 3 A. THAT'S CORRECT.

09:39AM 4 Q. AND THE AVERAGE PATIENTS PER STORE WENT FROM .8 TO 3.05;

09:39AM 5 RIGHT?

09:39AM 6 A. THAT'S CORRECT.

09:39AM 7 Q. AND THE CHECK IN TIME WAS GOING DOWN; RIGHT?

09:39AM 8 A. CORRECT.

09:39AM 9 Q. WAIT TIME WAS GOING DOWN?

09:39AM 10 A. CORRECT.

09:39AM 11 Q. VENOUS DRAWS WERE GOING DOWN; RIGHT?

09:39AM 12 A. THAT'S CORRECT.

09:39AM 13 Q. AND THAT WAS GOOD?

09:39AM 14 A. ALL OF IT IS GOOD SO FAR.

09:39AM 15 Q. OKAY. AND THEN IT HAS OTHER INFORMATION ABOUT TRAINING

09:39AM 16 DAYS AND SKILL OF TECHNICIAN.

09:39AM 17 DO YOU SEE THAT?

09:39AM 18 A. YES.

09:39AM 19 Q. OKAY. YOU CAN PUT THAT ASIDE.

09:39AM 20 LET'S GO TO THE NEXT EXHIBIT, WHICH IS 20231.

09:39AM 21 AND DO YOU SEE THAT IN THE BOTTOM HALF OF THE EMAIL ON

09:39AM 22 EXHIBIT 20231 IS THE SAME EMAIL THAT WE JUST LOOKED AT; RIGHT?

09:39AM 23 A. YES, SIR.

09:40AM 24 Q. AND THEN THERE'S A RESPONSE FROM BRAD, OR STEWART,

09:40AM 25 WASSON -- ACTUALLY TWO RESPONSES FROM HIM.

09:40AM 1 DO YOU SEE THAT?

09:40AM 2 A. YES.

09:40AM 3 Q. AND THAT'S ON AUGUST 15TH OF 2014 AS WELL?

09:40AM 4 A. YES.

09:40AM 5 MR. COOPERSMITH: YOUR HONOR, WE OFFER 20231.

09:40AM 6 MR. SCHENK: NO OBJECTION.

09:40AM 7 THE COURT: IT'S ADMITTED. IT MAY BE PUBLISHED.

09:40AM 8 (DEFENDANT'S EXHIBIT 20231 WAS RECEIVED IN EVIDENCE.)

09:40AM 9 BY MR. COOPERSMITH:

09:40AM 10 Q. OKAY. JUST TO GET STARTED.

09:40AM 11 DO YOU SEE IN THE BOTTOM THAT'S THE SAME EMAIL THAT WE

09:40AM 12 JUST LOOKED AT THAT WE READ; CORRECT?

09:40AM 13 A. YES.

09:40AM 14 Q. WITH THE SAME DATA; CORRECT?

09:40AM 15 A. CORRECT.

09:40AM 16 Q. AND THEN MR. WASSON, BRAD WASSON -- GOES BY BRAD, I

09:40AM 17 GUESS -- IT SAYS, "NICE NICE NICE WORK EVERYONE. THANKS,

09:40AM 18 BRAD."

09:40AM 19 DO YOU SEE THAT?

09:40AM 20 A. YES.

09:40AM 21 Q. SO HE WAS PLEASED?

09:40AM 22 A. CORRECT.

09:40AM 23 Q. AND THEN ABOVE THAT IT SAYS, "FYI" -- HE SENDS ANOTHER

09:41AM 24 RESPONSE.

09:41AM 25 DO YOU SEE THAT?

09:41AM 1 A. YES.

09:41AM 2 Q. AND I GUESS HE INCLUDES MORE PEOPLE ON THIS RESPONSE.

09:41AM 3 DO YOU SEE THAT?

09:41AM 4 A. YES.

09:41AM 5 Q. AND THEN IN THAT RESPONSE HE SAYS, "FYI NICE JOB AND

09:41AM 6 SENDING AS AN FYI -- I LIKE THESE KINDS OF SUMMARIES EQUALS IT

09:41AM 7 ARMS MY BRAIN WITH THE CORRECT STUFF SO I CAN GO TO WAR IF I

09:41AM 8 HAVE TOO."

09:41AM 9 DO YOU SEE THAT?

09:41AM 10 A. YES.

09:41AM 11 Q. AND I JUST WANT TO TALK ABOUT THE WAR REFERENCE. I'M NOT

09:41AM 12 SURE YOU KNOW, BUT AT THIS TIME WALGREENS WAS GOING THROUGH A

09:41AM 13 MERGER WITH THIS EUROPEAN COMPANY.

09:41AM 14 DO YOU REMEMBER THAT?

09:41AM 15 A. CORRECT.

09:41AM 16 Q. AND THAT'S THE BOOTS ALLIANCE?

09:41AM 17 A. THAT'S RIGHT.

09:41AM 18 Q. AND WE TALKED ABOUT IT LAST TIME YOU WERE HERE?

09:41AM 19 A. WE DID.

09:41AM 20 Q. OKAY. SO THE NEW PEOPLE WHO WERE KIND OF JOINING THE TEAM

09:41AM 21 FROM EUROPE, THEY WERE GOING TO HAVE TO UNDERSTAND THIS PROGRAM

09:41AM 22 AS WELL; RIGHT?

09:41AM 23 A. YES. IF I CAN JUST CLARIFY -- I SHOULDN'T SAY CLARIFY --

09:42AM 24 JUST DIVE IN A LITTLE DEEPER AS TO WHO BRAD WAS SENDING THIS

09:42AM 25 EMAIL TO.

09:42AM 1 HE WAS SENDING IT TO HIS DIRECT REPORTS, SO ALL OF THOSE
09:42AM 2 FOLKS THAT YOU SEE ON THAT TO ARE MY PEERS THAT REPORTED TO
09:42AM 3 BRAD.
09:42AM 4 AND WHAT HE IS BASICALLY STATING IS THAT HE LIKES THESE
09:42AM 5 TYPES OF SUMMARIES ON PROJECTS THAT WE'RE WORKING ON, SO IF HE
09:42AM 6 HAS TO GO AND EXPLAIN IT ON THE PROGRESS OF THOSE PROJECTS, HE
09:42AM 7 CAN DO SO TO ANY TYPE OF AUDIENCE, AND THAT'S WHAT HE'S TALKING
09:42AM 8 ABOUT HERE.
09:42AM 9 Q. OKAY. THANK YOU, MR. JHAVERI.
09:42AM 10 A. YOU BET.
09:42AM 11 Q. IF YOU CAN GO TO THE NEXT EXHIBIT, WHICH IS 20235.
09:42AM 12 AND YOU SEE THIS IS ANOTHER EMAIL INTERNAL TO WALGREENS;
09:42AM 13 CORRECT?
09:42AM 14 A. YES, SIR.
09:42AM 15 Q. AND THIS IS AN EMAIL STRING BETWEEN YOU AND WADE MIQUELON;
09:42AM 16 CORRECT?
09:42AM 17 A. THAT'S CORRECT.
09:43AM 18 Q. AND I THINK WE TALKED ABOUT HIM LAST TIME. HE'S THE CHIEF
09:43AM 19 FINANCIAL OFFICER?
09:43AM 20 A. THAT'S CORRECT.
09:43AM 21 Q. SO ANOTHER PERSON AT THE TOP ECHELONS OF THE WALGREENS
09:43AM 22 LEADERSHIP; RIGHT?
09:43AM 23 A. YES.
09:43AM 24 Q. OKAY. AND THIS IS ON AUGUST 14TH, 2015 AS WELL?
09:43AM 25 A. YES, IT WAS.

09:43AM 1 Q. AND YOU'RE ALSO CONVEYING THE SAME DATA IN THIS CASE TO
09:43AM 2 MR. MIQUELON?
09:43AM 3 A. YES.
09:43AM 4 MR. COOPERSMITH: YOUR HONOR, WE OFFER 20235.
09:43AM 5 MR. SCHENK: NO OBJECTION.
09:43AM 6 THE COURT: IT'S ADMITTED. IT MAY BE PUBLISHED.
09:43AM 7 (DEFENDANT'S EXHIBIT 20235 WAS RECEIVED IN EVIDENCE.)
09:43AM 8 BY MR. COOPERSMITH:
09:43AM 9 Q. OKAY. LET'S GO TO THE BOTTOM EMAIL.
09:43AM 10 SO ON AUGUST 14TH YOU WROTE, "HI WADE -- I HEARD THE NEWS
09:43AM 11 OF YOU LEAVING AND WANTED TO REACH OUT TO YOU JUST TO SAY THANK
09:43AM 12 YOU. YOUR HELP AND GUIDANCE OVER THE YEARS WAS MUCH
09:43AM 13 APPRECIATED AND I CANNOT THANK YOU ENOUGH.
09:43AM 14 "I HOPE OUR PATHS CROSS AGAIN -- TAKE CARE AND ALL THE
09:43AM 15 BEST SIR."
09:43AM 16 DO YOU SEE THAT?
09:43AM 17 A. YES.
09:43AM 18 Q. AND SO ALL OF THE BEST TO MR. MIQUELON --
09:44AM 19 A. YES.
09:44AM 20 Q. -- WHO WAS LEAVING?
09:44AM 21 A. YES.
09:44AM 22 Q. DO YOU KNOW WHY HE WAS LEAVING?
09:44AM 23 MR. SCHENK: OBJECTION. RELEVANCE.
09:44AM 24 THE COURT: SUSTAINED.
09:44AM 25 BY MR. COOPERSMITH:

09:44AM 1 Q. BUT HE WAS LEAVING?

09:44AM 2 A. HE WAS LEAVING.

09:44AM 3 Q. AND IF YOU GO UP THE CHAIN HERE, YOU THEN WROTE ON

09:44AM 4 AUGUST 14TH AT 9:02 P.M., "THANK YOU AND ABSOLUTELY WILL STAY

09:44AM 5 IN TOUCH. ALSO, WANTED TO LET YOU KNOW WHAT WE ARE DOING WITH

09:44AM 6 THERANOS. THE PROGRESS HAS BEEN GREAT SINCE WE PRESENTED TO

09:44AM 7 YOU IN MARCH. I PROMISED YOU WE WILL GET THIS DONE. SEE

09:44AM 8 BELOW."

09:44AM 9 DO YOU SEE THAT?

09:44AM 10 A. YES.

09:44AM 11 Q. AND THEN YOU ATTACH THAT SAME DATA THAT WE WERE LOOKING AT

09:44AM 12 BEFORE; RIGHT?

09:44AM 13 A. YES, SIR.

09:44AM 14 Q. AND THEN MR. MIQUELON, HE WAS WORKING ON -- LET ME STEP

09:44AM 15 BACK.

09:44AM 16 HE WAS WORKING ON THIS PROJECT FOR A WHILE; RIGHT?

09:44AM 17 A. PRIOR TO ME EVEN GETTING INVOLVED.

09:44AM 18 Q. RIGHT. IN FACT, YEARS PRIOR TO YOU GETTING INVOLVED;

09:44AM 19 RIGHT?

09:44AM 20 A. THAT'S CORRECT.

09:44AM 21 Q. BECAUSE HE HAD BEEN THE CFO?

09:45AM 22 A. THAT'S RIGHT.

09:45AM 23 Q. AND SO YOU WERE SENDING THIS TO HIM BECAUSE YOU KNEW HE

09:45AM 24 MIGHT BE INTERESTED IN THE STATUS OF THE THERANOS-WALGREENS

09:45AM 25 RELATIONSHIP?

09:45AM 1 A. YES. HE ASKED ME TO KEEP HIM IN THE LOOP AS TO WHAT WAS
09:45AM 2 GOING ON AND THE PROGRESS THAT WE WERE MAKING.
09:45AM 3 Q. AND THAT'S WHAT YOU WERE DOING?
09:45AM 4 A. THAT'S WHAT I WAS DOING.
09:45AM 5 Q. AND THEN YOU DID THAT IN PART BY SENDING HIM THIS DATA;
09:45AM 6 RIGHT?
09:45AM 7 A. YES, SIR.
09:45AM 8 Q. AND THEN HE RESPONDED, IF YOU LOOK AT THE TOP EMAIL, HE
09:45AM 9 SAYS, "WOW!!!!"
09:45AM 10 MAYBE I SHOULD YELL THE WORD "WOW." THERE ARE SEVERAL
09:45AM 11 EXCLAMATION POINTS.
09:45AM 12 DO YOU SEE THAT?
09:45AM 13 A. I DO.
09:45AM 14 Q. AND THEN HE SAYS, "KEEP ROCKIN IT. WADE."
09:45AM 15 DO YOU SEE THAT?
09:45AM 16 A. YES.
09:45AM 17 Q. AND THAT'S WHAT MR. WADE TOLD YOU IN RESPONSE TO YOUR
09:45AM 18 TRANSMISSION OF THIS DATA; RIGHT?
09:45AM 19 A. THAT'S RIGHT.
09:45AM 20 Q. LET'S GO TO THE NEXT EXHIBIT, 2214.
09:46AM 21 AND, YOUR HONOR, THIS IS ALREADY IN EVIDENCE, SO IF WE CAN
09:46AM 22 PUT IT UP ON THE SCREEN WITH YOUR PERMISSION?
09:46AM 23 THE COURT: ALL RIGHT.
09:46AM 24 BY MR. COOPERSMITH:
09:46AM 25 Q. SO LOOKING AT EXHIBIT 2214, THIS IS ANOTHER EMAIL FROM

09:46AM 1 PATTY HAWORTH TRANSMITTING AN AGENDA AND SLIDE DECK FOR A
09:46AM 2 PARTNERSHIP MEETING WITH THERANOS; CORRECT?
09:46AM 3 A. YES, SIR.
09:46AM 4 Q. AND THAT'S ON NOVEMBER 18TH, 2014?
09:46AM 5 A. YES.
09:46AM 6 Q. SO THIS IS NOW A FEW MONTHS AFTER THE LAST PARTNERSHIP
09:46AM 7 MEETING THAT WE LOOKED AT, WHICH WAS IN MID-AUGUST; CORRECT?
09:46AM 8 A. THAT'S CORRECT.
09:46AM 9 Q. OKAY. AND IF WE GO TO PAGE 8 FOR STARTERS.
09:47AM 10 THIS IS THAT SAME TYPE OF CHART FOR THERANOS EXPERIENCE
09:47AM 11 SURVEY SUMMARY.
09:47AM 12 DO YOU SEE THAT?
09:47AM 13 A. YES, I DO.
09:47AM 14 Q. BUT THIS TIME IT'S FOR A DIFFERENT TIME PERIOD. IN THIS
09:47AM 15 CASE IT'S OCTOBER OF '14; CORRECT?
09:47AM 16 A. CORRECT.
09:47AM 17 Q. OKAY. AND THEN THE NUMBERS ARE STILL REALLY GOOD; RIGHT?
09:47AM 18 A. YES, THE NUMBERS ARE GOOD.
09:47AM 19 Q. AND THEN IF YOU GO TO THE NEXT PAGE, PAGE 9, THAT HAS THAT
09:47AM 20 BREAKDOWN THAT WE WERE TALKING ABOUT WITH THE OTHER EXHIBIT,
09:47AM 21 BUT AGAIN IN THIS CASE FOR THE OCTOBER 2014 TIME PERIOD; RIGHT?
09:47AM 22 A. CORRECT.
09:47AM 23 Q. AND WE'RE STILL SEEING, LIKE, FAR AND AWAY PEOPLE ARE
09:47AM 24 GIVING THIS SERVICE A 5 COMPARED TO ANY OTHER NUMBER; RIGHT?
09:47AM 25 A. YES.

09:47AM 1 Q. OKAY. GO TO THE NEXT PAGE, 10. SAME THING WITH SAMPLE
09:47AM 2 COLLECTION AND SKILL OF TECHNICIAN?

09:47AM 3 A. YES.

09:47AM 4 Q. AND THE SAMPLE COLLECTION METRIC THAT WE ARE LOOKING AT
09:48AM 5 HERE, THAT WAS AT A TIME WHEN THE VENOUS DRAW PERCENTAGE WAS
09:48AM 6 STILL AROUND 40 PERCENT; RIGHT?

09:48AM 7 A. THAT'S CORRECT.

09:48AM 8 Q. AND IF YOU GO TO THE NEXT PAGE, PAGE 11, YOU SEE THE PIE
09:48AM 9 CHART THAT HAS THAT INFORMATION THAT WE LOOKED AT BEFORE ABOUT
09:48AM 10 WHERE THE PEOPLE GOT THEIR PRESCRIPTIONS FILLED.

09:48AM 11 DO YOU SEE THAT?

09:48AM 12 A. YES.

09:48AM 13 Q. AND THE NEXT PAGE IS LIKELIHOOD OF RETURNING ON PAGE 12,
09:48AM 14 AND THAT'S STILL REALLY GOOD; RIGHT?

09:48AM 15 A. YES.

09:48AM 16 Q. AND THEN WE HAVE AFTER THAT, IF YOU QUICKLY GO THROUGH
09:48AM 17 THESE WITHOUT READING THEM, YOU SEE -- I'M SORRY, MR. ALLEN.
09:48AM 18 STARTING ON PAGE 14.

09:48AM 19 IT HAS WHAT PEOPLE ARE SAYING. SO THERE'S POSITIVE
09:48AM 20 COMMENTS FROM CERTAIN PEOPLE WHO RESPONDED ON THE IPAD?

09:48AM 21 A. YES.

09:48AM 22 Q. AND THEN ALSO ON PAGE 16, THERE'S AN INCLUSION OF WHAT
09:49AM 23 PEOPLE ARE COMPLAINING ABOUT; RIGHT?

09:49AM 24 A. YES, THAT'S CORRECT.

09:49AM 25 Q. AND SO, FOR EXAMPLE, THE FIRST ONE, THE PERSON WANTED

09:49AM 1 BETTER DIRECTIONS ABOUT WHERE TO CHECK IN; RIGHT?

09:49AM 2 A. YES.

09:49AM 3 Q. AND WAS SAYING THAT THERE SHOULD BE SOME BATHROOM REPAIRS;

09:49AM 4 RIGHT?

09:49AM 5 A. THAT'S CORRECT.

09:49AM 6 Q. AND THEN OTHER PEOPLE WERE COMPLAINING THAT THEY HAD TO

09:49AM 7 WAIT TOO LONG; RIGHT?

09:49AM 8 A. THAT'S CORRECT.

09:49AM 9 Q. OKAY. AND THEN PAGE 17 HAS SOME ADDITIONAL COMPLAINTS; IS

09:49AM 10 THAT RIGHT?

09:49AM 11 A. YES.

09:49AM 12 Q. SO, FOR EXAMPLE, IN THE MIDDLE OF THAT PAGE, SOMEONE

09:49AM 13 COMPLAINED ABOUT WANTING TO HAVE A MORE PRIVATE AREA TO WAIT.

09:49AM 14 DO YOU SEE THAT?

09:49AM 15 A. THAT'S CORRECT.

09:49AM 16 Q. AND SO THESE ARE THE KINDS OF THINGS THAT WALGREENS AND

09:49AM 17 THERANOS WOULD HAVE TO TAKE INTO ACCOUNT IN ORDER TO CONTINUE

09:49AM 18 TO IMPROVE THE PROGRAM; RIGHT?

09:49AM 19 A. CORRECT. WE WOULD EVALUATE ALL OF THE COMPLIMENTS, AS

09:49AM 20 WELL AS THE COMPLAINTS, COLLABORATIVELY IN A PARTNERSHIP AND

09:50AM 21 DETERMINE WHICH WERE ACTUALLY NECESSARY, AND THAT'S WHAT WE

09:50AM 22 WOULD USE THIS FOR.

09:50AM 23 Q. OKAY. IF YOU GO TO PAGE 20, MR. JHAVERI.

09:50AM 24 THIS PAGE TALKS ABOUT HCC THERANOS INTEGRATION.

09:50AM 25 DO YOU SEE THAT?

09:50AM 1 A. I'M SORRY, WHAT WAS IT?

09:50AM 2 Q. IT'S PAGE 20 OF THE EXHIBIT.

09:50AM 3 A. I HAVE IT.

09:50AM 4 Q. OKAY. THANK YOU.

09:50AM 5 DO YOU SEE IT HAS A HEADING HCC-THERANOS INTEGRATION?

09:50AM 6 A. YES.

09:50AM 7 Q. AND THAT'S THOSE HEALTH CARE CLINICS THAT WE TALKED ABOUT

09:50AM 8 LAST TIME YOU WERE HERE; RIGHT?

09:50AM 9 A. CORRECT.

09:50AM 10 Q. AND ALSO THE PHARMACY THERANOS INTEGRATION?

09:50AM 11 DO YOU SEE THAT?

09:50AM 12 A. THAT'S RIGHT.

09:50AM 13 Q. AND PART OF THAT IS I.T. INTEGRATION?

09:50AM 14 A. CORRECT. THIS ENTIRE SLIDE IS FOR I.T. OVERVIEW.

09:50AM 15 Q. RIGHT.

09:50AM 16 A. RIGHT.

09:50AM 17 Q. AND THEN IF YOU GO TO THE NEXT PAGE, PAGE 21, THERE'S AN

09:50AM 18 ISSUE THAT IS BEING WORKED ON CALLED THE VENDOR SECURITY

09:51AM 19 AGREEMENT?

09:51AM 20 A. YES.

09:51AM 21 Q. AND CAN YOU JUST BRIEFLY TELL US WHAT THE VENDOR SECURITY

09:51AM 22 AGREEMENT WAS?

09:51AM 23 A. THE VENDOR SECURITY ASSESSMENT WAS ALL OF THE VENDORS THAT

09:51AM 24 WE USE TO DELIVER LET'S SAY INTERNET SERVICE OR THINGS OF THAT

09:51AM 25 NATURE ARE GOING THROUGH A SECURITY ASSESSMENT BY OUR I.T.

09:51AM 1 DEPARTMENT, MAKE SURE IT'S PRIVATE, MAKE SURE THERE AREN'T ANY
09:51AM 2 HOLES IN WHAT THEY'RE DELIVERING TO US.
09:51AM 3 AND SO THAT'S WHAT THIS IS REFERRING TO.
09:51AM 4 Q. OKAY. SO THAT WAS AN ONGOING PROJECT AT THIS TIME?
09:51AM 5 A. WE DO THIS FOR EVERY VENDOR.
09:51AM 6 Q. OKAY. IF WE GO A FEW PAGES MORE, THEN WE HAVE ON 25, DO
09:51AM 7 YOU SEE WE HAVE A SLIDE THAT STARTS THE SECTION CALLED
09:51AM 8 DIAGNOSTIC TESTING -- PRIVATE HEALTH ROOM ALIGNMENT?
09:51AM 9 A. YES.
09:51AM 10 Q. AND SOMETIMES THAT'S REFERRED TO AS PHR'S?
09:51AM 11 A. YES.
09:51AM 12 Q. AND THAT'S THE ROOM THAT COULD BE USED FOR THERANOS BLOOD
09:51AM 13 TESTS; RIGHT?
09:51AM 14 A. CORRECT. THIS IS THE ROOM THAT I REFERENCED THE LAST
09:52AM 15 TIME, THE MULTI-USE ROOM. PHARMACISTS CAN USE IT FOR
09:52AM 16 CONSULTATION, YOU MAY GET YOUR VACCINES THERE, OR YOU CAN DO
09:52AM 17 ANOTHER SERVICE SUCH AS THERANOS.
09:52AM 18 Q. OKAY. IF YOU GO TO THE NEXT PAGE, PAGE 26, THERE'S A
09:52AM 19 SLIDE CALLED PHR (PRIVATE HEALTH ROOM) PRIOR TO REDESIGN;
09:52AM 20 RIGHT?
09:52AM 21 A. YES.
09:52AM 22 Q. AND SO THERE'S A DISCUSSION AT THIS MEETING IN NOVEMBER OF
09:52AM 23 2014 ABOUT REDESIGN OF THE PRIVATE HEALTH ROOMS; CORRECT?
09:52AM 24 A. CORRECT.
09:52AM 25 AND JUST TO RECALL, THIS WAS ALL PART OF THE REDESIGN OF

09:52AM 1 OUR STORES, THE WELLNESS EXPERIENCE PROJECT, AND SO WE ARE
09:52AM 2 ALWAYS LOOKING AT WHAT CAN WE IMPROVE.
09:52AM 3 WHAT YOU'RE SEEING IS LEARNINGS THAT WE WERE TAKING INTO
09:52AM 4 CONSIDERATION TO MAKE IT BETTER, TO MAKE THE DESIGN A LITTLE
09:52AM 5 BIT MORE USABLE.
09:52AM 6 Q. OKAY. THE NEXT PAGE HAS -- IT'S A LITTLE HARD TO SEE, BUT
09:52AM 7 YOU CAN SEE IT'S A PHR (PRIVATE HEALTH ROOM), AND IT HAS A
09:52AM 8 DRAWING OF WHAT THE ROOM WOULD LOOK LIKE PRIOR TO REDESIGN;
09:53AM 9 RIGHT?
09:53AM 10 A. YES.
09:53AM 11 Q. AND THEN IF YOU GO TO THE NEXT PAGE IT HAS PHR (PRIVATE
09:53AM 12 HEALTH ROOM) REDESIGNED; RIGHT?
09:53AM 13 A. YES.
09:53AM 14 Q. AND THEN THE NEXT PAGE IS A DRAWING OF WHAT THAT WOULD
09:53AM 15 LOOK LIKE; RIGHT?
09:53AM 16 A. THAT'S CORRECT.
09:53AM 17 Q. OKAY. AND THEN IF YOU GO TO THE NEXT PAGE, WHICH IS
09:53AM 18 PAGE 30 OF THIS EXHIBIT, IT HAS PHR (PRIVATE HEALTH ROOM)
09:53AM 19 SHARED SERVICES; RIGHT?
09:53AM 20 A. THAT'S CORRECT.
09:53AM 21 Q. AND THEN THERE'S A DRAWING ON PAGE 31 OF WHAT THAT PHR
09:53AM 22 WOULD LOOK LIKE WITH THE SHARED SERVICES; RIGHT?
09:53AM 23 A. THAT'S CORRECT.
09:53AM 24 Q. AND THEN ONE ADDITION TO THAT REDESIGN IS IF YOU GO TO THE
09:53AM 25 BOTTOM, IT SAYS THERE WOULD BE A CENTRIFUGE ON COUNTER; IS THAT

09:53AM 1 RIGHT?

09:53AM 2 A. YES. WHAT WE WERE MAKING SURE THAT WE HAD ACCOUNTED FOR

09:53AM 3 WAS ANY TYPE OF EQUIPMENT THAT WAS NECESSARY BECAUSE IT WOULD

09:53AM 4 DETERMINE WHAT KIND OF DESIGN, WHAT KIND OF TABLES, WHAT KIND

09:53AM 5 OF TABLE TOPS THAT WE WOULD NEED, AND SO WE NEEDED TO MAKE SURE

09:54AM 6 IF THERE WAS A CENTRIFUGE IN THIS CASE INVOLVED IN THAT SHARED

09:54AM 7 SERVICES, THAT WE ACCOUNTED FOR IT.

09:54AM 8 Q. AND A CENTRIFUGE IS SOMETHING THAT IS USED IN THE PROCESS

09:54AM 9 OF COLLECTING BLOOD; CORRECT?

09:54AM 10 A. CORRECT, RIGHT AFTER THE COLLECTION.

09:54AM 11 Q. RIGHT.

09:54AM 12 YOU CAN SET THAT ASIDE.

09:54AM 13 IF YOU CAN GO TO EXHIBIT 2275, WHICH IS ALREADY IN

09:54AM 14 EVIDENCE.

09:54AM 15 MR. JHAVERI, THIS IS AN EMAIL FROM YOU TO MR. BALWANI WITH

09:54AM 16 A COPY TO OTHER PEOPLE AT WALGREENS ON DECEMBER 8TH, 2014;

09:54AM 17 CORRECT?

09:54AM 18 A. YES, SIR.

09:54AM 19 Q. AND I JUST WANT TO START WITH ITEM 1, AND THAT SAYS

09:54AM 20 CONTRACT.

09:54AM 21 DO YOU SEE THAT?

09:54AM 22 A. YES.

09:55AM 23 Q. AND IT SAYS, "I HAVE ATTACHED A HIGH LEVEL ONE SLIDE

09:55AM 24 POWERPOINT ON THE TOPICS OF DISCUSSION."

09:55AM 25 DO YOU SEE THAT?

09:55AM 1 A. YES, SIR.

09:55AM 2 Q. "THE EXECUTIVE TEAM AT WALGREENS IS IN THE LOOP AND HAVE

09:55AM 3 ENDORSED THE POINTS."

09:55AM 4 DO YOU SEE THAT?

09:55AM 5 A. I DO.

09:55AM 6 Q. AND SO AT THIS TIME THERE WAS DISCUSSION BETWEEN THE

09:55AM 7 WALGREENS TEAM AND THE THERANOS TEAM ABOUT MODIFYING THE

09:55AM 8 CONTRACT?

09:55AM 9 A. THAT'S CORRECT.

09:55AM 10 Q. AND AS WE DISCUSSED LAST TIME YOU WERE HERE, THERE HAD

09:55AM 11 BEEN OTHER MODIFICATIONS DURING THE LIFE OF THE

09:55AM 12 THERANOS-WALGREENS PARTNERSHIP; RIGHT?

09:55AM 13 A. YES.

09:55AM 14 Q. AND THE RELATIONSHIP HAD BEEN EVOLVING, ACTUALLY, SINCE

09:55AM 15 2010?

09:55AM 16 A. THAT'S CORRECT.

09:55AM 17 Q. AND THIS WAS ANOTHER DISCUSSION ABOUT AMENDING OR

09:55AM 18 MODIFYING THE CONTRACT; RIGHT?

09:55AM 19 A. THAT'S CORRECT.

09:55AM 20 Q. OKAY. AND THEN ON THE SECOND PAGE OF THE EXHIBIT, IF WE

09:55AM 21 CAN JUST QUICKLY GO TO THAT, THAT'S THE ONE SLIDE POWERPOINT;

09:55AM 22 RIGHT?

09:55AM 23 A. CORRECT.

09:55AM 24 Q. AND WALGREENS'S PROPOSAL IS THAT THE SERVICE FEE FOR

09:56AM 25 WALGREENS WOULD BE A LITTLE HIGHER; RIGHT?

09:56AM 1 A. THAT'S CORRECT.

09:56AM 2 Q. AND THAT WOULD HELP WALGREENS OFFSET SOME OF THE COSTS OF

09:56AM 3 THE PROGRAM; RIGHT?

09:56AM 4 A. CORRECT.

09:56AM 5 AT THIS POINT THE COST THAT WE'RE PUTTING IN WAS GREATER

09:56AM 6 THAN WHAT WE WERE BEING REIMBURSED FOR THE TEST, SO WE WERE

09:56AM 7 TRYING TO MAKE SURE THAT WE WERE ABLE TO ACCOMMODATE ALL OF THE

09:56AM 8 COSTS THAT WE WERE INCURRING.

09:56AM 9 Q. AND THAT WOULD BE ONE WAY TO DO IT IS TO RECOVER SOME

09:56AM 10 COSTS BY RAISING THE AMOUNT OF MONEY THAT THERANOS WOULD GET;

09:56AM 11 RIGHT?

09:56AM 12 A. FROM THERANOS, RIGHT.

09:56AM 13 Q. RIGHT.

09:56AM 14 A. CORRECT.

09:56AM 15 Q. ANOTHER WAY TO DO IT WOULD BE TO SHIFT SOME COSTS TO

09:56AM 16 THERANOS; RIGHT?

09:56AM 17 A. OR TO REDUCE THE OVERALL COSTS.

09:56AM 18 Q. RIGHT. THOSE THREE WAYS ARE WAYS THAT YOU COULD DEAL WITH

09:56AM 19 THAT COST ISSUE; RIGHT?

09:56AM 20 A. CORRECT.

09:56AM 21 Q. AND BUSINESSES LIKE WALGREENS, AND YOU AS AN EXECUTIVE AT

09:56AM 22 WALGREENS AT THE TIME, YOU'RE ALWAYS THINKING ABOUT HOW TO DEAL

09:56AM 23 WITH COST ISSUES AND HOW TO PROVIDE GOOD SERVICE, BUT STILL AT

09:56AM 24 A COST THAT YOU COULD -- THAT MAKES SENSE FOR THE BUSINESS;

09:56AM 25 RIGHT?

09:56AM 1 A. ABSOLUTELY.

09:56AM 2 Q. AND THAT'S WHAT YOU ARE DOING HERE?

09:57AM 3 A. YES.

09:57AM 4 Q. OKAY. AND THIS WAS, LIKE, STARTED A DISCUSSION THAT WENT

09:57AM 5 ON FOR MANY MONTHS ABOUT HOW THE CONTRACT BETWEEN WALGREENS AND

09:57AM 6 THERANOS MIGHT BE AMENDED; RIGHT?

09:57AM 7 A. CORRECT.

09:57AM 8 SO IF I COULD JUST TOUCH ON THESE FOUR BUCKETS HERE, THE

09:57AM 9 SERVICE FEE; THE BUILD OUT MIX WAS THE TYPE OF BUILD OUT; AND

09:57AM 10 THE TRAINING, OF COURSE WHO WAS BEING TRAINED AND HOW; AND THEN

09:57AM 11 THE SLA'S WERE SERVICE LEVEL AGREEMENTS, SO METRICS THAT WE

09:57AM 12 WOULD CLEARLY DEFINE AS PART OF THE CONTRACT SO THERE WAS NO

09:57AM 13 AMBIGUITY AS TO WHAT WE WERE TRYING TO DRIVE TOWARDS.

09:57AM 14 Q. OKAY. AND SLA'S ARE SERVICE LEVEL AGREEMENTS?

09:57AM 15 A. YES, SIR.

09:57AM 16 Q. AND IN THE CONTRACT THAT EXISTED AT THE TIME, THERE WAS NO

09:57AM 17 SLA; CORRECT?

09:57AM 18 A. CORRECT.

09:57AM 19 Q. LET'S GO BACK TO THE EMAIL ON THE FIRST PAGE.

09:58AM 20 IN THE FIRST SENTENCE AFTER YOU SAY "HELLO SUNNY," YOU

09:58AM 21 WROTE, "FIRST, THANK YOU AGAIN FOR HANDLING THE GENENTECH

09:58AM 22 MEETING LAST WEEK -- MUCH APPRECIATED. AS PROMISED, THE

09:58AM 23 FOLLOWING ARE THE ITEMS WE SHOULD CONTINUE TO DISCUSS TODAY."

09:58AM 24 DO YOU SEE THAT?

09:58AM 25 A. YES, SIR.

09:58AM 1 Q. AND GENENTECH IS A PHARMACEUTICAL COMPANY?

09:58AM 2 A. CORRECT.

09:58AM 3 Q. AND WALGREENS WAS IN DISCUSSION WITH GENENTECH ABOUT A

09:58AM 4 PROGRAM WITH GENENTECH; RIGHT?

09:58AM 5 A. I DON'T REMEMBER THE SPECIFIC OF THE GENENTECH

09:58AM 6 DISCUSSIONS.

09:58AM 7 Q. OKAY. LET'S GO TO EXHIBIT 20566.

09:59AM 8 LET ME KNOW WHEN YOU GET THERE, MR. JHAVERI.

09:59AM 9 A. YES.

09:59AM 10 Q. THANK YOU.

09:59AM 11 DO YOU SEE ON THE FIRST PAGE OF EXHIBIT 20566 THERE'S AN

09:59AM 12 EMAIL FROM YOU TO MR. BALWANI?

09:59AM 13 A. YES, SIR.

09:59AM 14 Q. ON OCTOBER 21ST, 2014?

09:59AM 15 A. YES.

09:59AM 16 Q. AND THEN ON THE BOTTOM EMAIL IS AN EMAIL TO YOU FROM

09:59AM 17 ANOTHER COLLEAGUE AT WALGREENS NAMED JENNIFER LAPKIN; CORRECT?

09:59AM 18 A. YES.

09:59AM 19 MR. COOPERSMITH: YOUR HONOR, WE OFFER 20566.

09:59AM 20 MR. SCHENK: YOUR HONOR, RELEVANCE.

09:59AM 21 THE COURT: ARE YOU OFFERING -- IT LOOKS LIKE IT'S

09:59AM 22 NINE PAGES.

09:59AM 23 MR. COOPERSMITH: YES, YOUR HONOR.

10:00AM 24 (PAUSE IN PROCEEDINGS.)

10:00AM 25 THE COURT: IS THIS RELATED TO RELATIONSHIPS WITH

10:01AM 1 OTHER LABORATORIES?

10:01AM 2 MR. COOPERSMITH: NOT LABORATORIES, YOUR HONOR.

10:01AM 3 THE GOVERNMENT HAS PUT THE ISSUE OF PHARMACEUTICAL WORK

10:01AM 4 THAT WALGREENS MIGHT DO DIRECTLY AT ISSUE, AND THIS GOES TO

10:01AM 5 DISCUSSIONS AMONG THE VARIOUS BUSINESS PARTIES ABOUT MOVING

10:01AM 6 FORWARD WITH THE PHARMACEUTICAL PROGRAM.

10:01AM 7 THE COURT: YOU WANT THAT IN?

10:01AM 8 MR. COOPERSMITH: YES, YOUR HONOR.

10:01AM 9 THE COURT: OKAY. I'LL ADMIT IT.

10:01AM 10 MR. COOPERSMITH: THANK YOU.

10:01AM 11 (DEFENDANT'S EXHIBIT 20566 WAS RECEIVED IN EVIDENCE.)

10:01AM 12 BY MR. COOPERSMITH:

10:01AM 13 Q. OKAY. MR. JHAVERI, NOW THAT WE HAVE THE EXHIBIT, LET'S

10:01AM 14 TAKE A LOOK AT IT.

10:01AM 15 SO IF WE GO TO PAGE 9, AND I THINK EVERYONE CAN SEE IT

10:01AM 16 NOW -- ACTUALLY LET'S START WITH PAGE 8, THE EARLIEST EMAIL IN

10:01AM 17 TIME.

10:01AM 18 THIS IS FROM SOMEBODY NAMED STEM KOMATHI.

10:01AM 19 DO YOU SEE THAT?

10:01AM 20 A. I DO.

10:01AM 21 Q. AND THIS WAS A PERSON AT GENENTECH; RIGHT?

10:01AM 22 A. I DON'T KNOW.

10:01AM 23 Q. YOU SEE THAT SHE HAS THIS GENE.COM EMAIL?

10:02AM 24 A. CORRECT.

10:02AM 25 Q. AND THEN SHE WRITES TO JENNIFER LAPKIN, "HI JENNIFER.

10:02AM 1 "I HOPE YOU ARE DOING WELL. I AM BACK FROM SABBATICAL, I
10:02AM 2 WANT TO PICK UP ON OUR CONVERSATION ON HOW GENENTECH/ROCHE AND
10:02AM 3 WALGREENS CAN COLLABORATE ON THE CLINICAL TRIAL SPACE. DO YOU
10:02AM 4 THINK WE SHOULD JUST PLAN AN EXPLORATORY WORKSHOP WHERE WE
10:02AM 5 BRING OUR TEAMS TOGETHER TO DISCUSS POSSIBILITIES? OR MAYBE A
10:02AM 6 FIELD TRIP TO YOUR WALGREENS CLINIC IN PALO ALTO?"
10:02AM 7 AND IT GOES ON, "ON ANOTHER NOTE, WOULD YOU BE ABLE TO GET
10:02AM 8 MYSELF AND SEVERAL OTHER SENIOR LEADERS FROM GENENTECH AN INTRO
10:02AM 9 TO ELIZABETH HOLMES AND A VISIT TO THERANOS?"
10:02AM 10 DO YOU SEE THAT?
10:02AM 11 A. YES, I DO.
10:02AM 12 Q. AND RIGHT ABOVE THAT EMAIL MS. LAPKIN RESPONDS; RIGHT?
10:02AM 13 AND SHE TALKS ABOUT SPENDING THE MORNING POTENTIALLY IN
10:03AM 14 PALO ALTO AT THE FACILITY THAT SUPPORTS THERANOS; RIGHT?
10:03AM 15 A. YES.
10:03AM 16 Q. AND THAT WOULD BE THE PALO ALTO STORE THAT WE LOOKED AT A
10:03AM 17 FEW MINUTES AGO?
10:03AM 18 A. CORRECT.
10:03AM 19 Q. OKAY. IF YOU GO TO PAGE 6 OF THE EXHIBIT, THERE'S AN
10:03AM 20 EMAIL FROM GERALD GLEESON ON AUGUST 26TH, 2014; RIGHT?
10:03AM 21 A. YES.
10:03AM 22 Q. DO YOU SEE THAT?
10:03AM 23 A. YES.
10:03AM 24 Q. AND HE HAS A SIGNATURE LINE; RIGHT? AND IF YOU GO DOWN,
10:03AM 25 IT SAYS HE'S THE GROUP VICE PRESIDENT -- BIOPHARMACEUTICAL

10:03AM 1 DEVELOPMENT AND PAYER STRATEGY.

10:03AM 2 DO YOU SEE THAT?

10:03AM 3 A. YES.

10:03AM 4 Q. AND MR. GLEESON WROTE IN HIS EMAIL, "BRAD -- I KNOW YOU

10:03AM 5 AND NIM ARE PRIMARY IN THE OPERATING RELATIONSHIP WITH THERANOS

10:03AM 6 AND ELIZABETH HOLMES, TO THAT END ROCHE/GENENTECH IS VERY

10:04AM 7 INTERESTED IN WORKING WITH US TO COLLABORATE ON EXPLORING

10:04AM 8 POTENTIAL BUSINESS OPPORTUNITIES."

10:04AM 9 DO YOU SEE THAT?

10:04AM 10 A. YES.

10:04AM 11 Q. AND THEN THERE ARE VARIOUS SCHEDULING EMAILS BACK AND

10:04AM 12 FORTH.

10:04AM 13 THEN IF YOU GO TO THE TOP OF PAGE 2, YOU WROTE AN EMAIL TO

10:04AM 14 MS. LAPKIN.

10:04AM 15 DO YOU SEE THAT?

10:04AM 16 A. YES, I DO.

10:04AM 17 Q. AND YOU WROTE, "HI JENNIFER,

10:04AM 18 "WE HAVE AN EXECUTIVE MEETING IN ARIZONA ON OCTOBER 23/24.

10:04AM 19 LET ME SPEAK WITH SUNNY BALWANI, THEIR COO. IT MAY BE

10:04AM 20 DIFFICULT TO MEET WITH ELIZABETH AS SHE IS ON THE ROAD QUITE A

10:04AM 21 BIT."

10:04AM 22 DO YOU SEE THAT?

10:04AM 23 A. YES.

10:04AM 24 Q. AND THEN IF YOU GO TO THE FIRST PAGE, YOU SEE THERE'S A

10:04AM 25 RESPONSE FROM MS. LAPKIN TO YOU?

10:04AM 1 A. YES, SIR.

10:04AM 2 Q. AND SHE WRITES, "HOPE ALL IS WELL. AFTER MUCH NIGHTMARE

10:04AM 3 SCHEDULING CONFLICTS WE FINALLY HAVE A DATE FOR A TRIP OUT TO

10:05AM 4 GENENTECH."

10:05AM 5 DO YOU SEE THAT?

10:05AM 6 A. YES.

10:05AM 7 Q. AND GOING DOWN TO THE SECOND ONE. "WE HAVEN'T LAID OUT

10:05AM 8 THE AGENDA YET BUT HOWIE WILL BE GIVING A CLINICAL TRIALS

10:05AM 9 OVERVIEW AND THEN WE'D LIKE TO SEE THE PALO ALTO STORE WITH

10:05AM 10 THERANOS. CURIOUS, IS THIS STORE A W.E. FORMAT AS WELL?"

10:05AM 11 DO YOU SEE THAT?

10:05AM 12 A. YES.

10:05AM 13 Q. AND IT GOES ON.

10:05AM 14 DO YOU SEE THAT?

10:05AM 15 A. YES.

10:05AM 16 Q. AND THEN DO YOU REMEMBER THE LAST TIME WE MET,

10:05AM 17 MR. JHAVERI, WE LOOKED AT THE CONTRACT BETWEEN WALGREENS AND

10:05AM 18 THERANOS?

10:05AM 19 A. YEAH, WE LOOKED AT SEVERAL.

10:05AM 20 Q. WE LOOKED AT SEVERAL?

10:05AM 21 A. YEAH.

10:05AM 22 Q. AND IN THOSE CONTRACTS, IT HAD A CLAUSE THAT ONE THING

10:05AM 23 THAT COULD HAPPEN IN THE FUTURE WAS THAT PATIENTS INVOLVED WITH

10:05AM 24 CLINICAL TRIALS AT PHARMACEUTICAL COMPANIES COULD GO TO A

10:05AM 25 WALGREENS STORE AND GET THEIR BLOOD TESTED FOR WHATEVER TEST

10:05AM 1 THEY NEEDED AS PART OF THE CLINICAL TRIAL.

10:05AM 2 DO YOU REMEMBER THAT?

10:05AM 3 A. YES.

10:05AM 4 Q. OKAY. AND THEN JUST TO FINISH THIS EMAIL, AT THE VERY

10:05AM 5 TOP, YOU SAY, "HI SUNNY -- WOULD YOU BE AVAILABLE DECEMBER 4TH?

10:06AM 6 THIS IS AN IMPORTANT MEETING WITH GENENTECH."

10:06AM 7 RIGHT?

10:06AM 8 A. YES.

10:06AM 9 Q. OKAY. LET'S GO TO THE NEXT EXHIBIT, 20567.

10:06AM 10 AND LOOKING AT THAT EXHIBIT -- WELL, I'LL WAIT UNTIL YOU

10:06AM 11 GET THERE, MR. JHAVERI.

10:06AM 12 A. YES, I HAVE IT.

10:06AM 13 Q. OKAY. AND YOU SEE THIS IS ANOTHER EMAIL STRING FROM EARLY

10:06AM 14 JANUARY 2015?

10:06AM 15 A. YES.

10:06AM 16 Q. AND IT'S AN EMAIL INTERNAL TO WALGREENS; RIGHT?

10:06AM 17 A. YES, IT IS.

10:06AM 18 Q. AND IT IS -- THE SUBJECT IS ABOUT THE GNE CLINICAL TRIALS

10:07AM 19 FOLLOW UP?

10:07AM 20 A. YES.

10:07AM 21 Q. AND SO WE'RE TALKING ABOUT THE SAME SUBJECT THAT WE JUST

10:07AM 22 DISCUSSED IN THE LAST EXHIBIT; RIGHT?

10:07AM 23 A. THAT'S CORRECT.

10:07AM 24 Q. OKAY. AND YOU'RE DISCUSSING HOW TO GO ABOUT THIS WITH

10:07AM 25 SOME OF YOUR COLLEAGUES WITHIN WALGREENS; RIGHT?

10:07AM 1 A. YES, SIR.

10:07AM 2 JUROR: CAN WE TAKE A BREAK?

10:07AM 3 THE COURT: TAKE A BREAK?

10:07AM 4 JUROR: YES.

10:07AM 5 THE COURT: YES, LET'S DO THAT. LET'S TAKE A BREAK

10:07AM 6 OF ABOUT TEN MINUTES, PLEASE.

10:07AM 7 MR. COOPERSMITH: YES, YOUR HONOR.

10:18AM 8 (RECESS FROM 10:17 A.M. UNTIL 10:22 A.M.)

10:22AM 9 THE COURT: WE'RE BACK ON THE RECORD. THE JURY IS

10:22AM 10 PRESENT. THE WITNESS IS PRESENT.

10:22AM 11 ALL COUNSEL AND MR. BALWANI ARE PRESENT.

10:22AM 12 MR. COOPERSMITH.

10:22AM 13 MR. COOPERSMITH: THANK YOU, YOUR HONOR.

10:22AM 14 Q. OKAY. MR. JHAVERI, BEFORE THE BREAK WE WERE TALKING ABOUT

10:22AM 15 EXHIBIT 20567.

10:22AM 16 DO YOU STILL HAVE THAT?

10:22AM 17 A. I DO.

10:22AM 18 Q. THANK YOU.

10:22AM 19 AND THIS IS ON THE SUBJECT OF GENENTECH?

10:22AM 20 A. THAT'S CORRECT.

10:22AM 21 Q. THE PHARMACEUTICAL COMPANY?

10:22AM 22 A. YES.

10:22AM 23 Q. AND THIS IS AN EMAIL STRING THAT YOU EXCHANGED WITH

10:22AM 24 COLLEAGUES INSIDE OF WALGREENS ABOUT CLINICAL TRIAL WORK WITH

10:23AM 25 THAT COMPANY?

10:23AM 1 A. THAT'S CORRECT.

10:23AM 2 Q. AND INVOLVING THERANOS AS WELL POTENTIALLY?

10:23AM 3 A. YES, SIR.

10:23AM 4 Q. OKAY. AND AGAIN, THIS IS EARLY JANUARY 2015?

10:23AM 5 A. YES.

10:23AM 6 MR. COOPERSMITH: YOUR HONOR, WE OFFER 20567.

10:23AM 7 MR. SCHENK: NO OBJECTION.

10:23AM 8 THE COURT: IT'S ADMITTED, AND IT MAY BE PUBLISHED.

10:23AM 9 (DEFENDANT'S EXHIBIT 20567 WAS RECEIVED IN EVIDENCE.)

10:23AM 10 BY MR. COOPERSMITH:

10:23AM 11 Q. OKAY. MR. JHAVERI, LET'S START FROM THE EARLIEST ONE ON

10:23AM 12 PAGE 2.

10:23AM 13 THIS IS JENNIFER GREEN WRITING TO A GROUP OF PEOPLE,

10:23AM 14 COPYING YOURSELF.

10:23AM 15 DO YOU SEE THAT?

10:23AM 16 A. YES, SIR.

10:23AM 17 Q. AND JENNIFER GREEN IS THE WALGREENS DIRECTOR OF NATIONAL

10:23AM 18 ACCOUNTS; IS THAT RIGHT?

10:23AM 19 A. YES.

10:23AM 20 Q. AND SHE WROTE, "TEAM,

10:23AM 21 "HOPE EVERYONE IS HAVING A WONDERFUL HOLIDAY WITH FAMILY

10:23AM 22 AND FRIENDS. I WANTED TO SHARE A ROUGH DOCUMENT DAVID ZHANG

10:23AM 23 AND I HAVE BEEN WORKING ON OUTLINING THE MEETING AND OUR NEXT

10:23AM 24 STEPS FOR 2015."

10:23AM 25 DO YOU SEE THAT?

10:23AM 1 A. YES.

10:24AM 2 Q. AND SHE SAYS, "DAVID AND I WILL BE SETTING UP A CALL."

10:24AM 3 AND THEN THERE'S A RESPONSE FROM HOWARD GOLUB. AM I

10:24AM 4 SAYING THAT RIGHT?

10:24AM 5 A. GOLUB.

10:24AM 6 Q. AND HE WRITES ON PAGE 1 ON JANUARY 2ND, "JEN,

10:24AM 7 "PLEASE FIND MY EDITS/COMMENTS. I THINK THE ULTIMATE

10:24AM 8 OUTCOME OF THAT MEETING THAT BENEFITS US THE MOST SHOULD BE

10:24AM 9 THAT THEY SEND US REAL STUDY PROTOCOLS THAT ARE A GOOD MATCH

10:24AM 10 FOR US, AND FOR WHICH WE WOULD THEN SEND THEM BACK PROTOCOLS."

10:24AM 11 DO YOU SEE THAT?

10:24AM 12 A. YES, SIR.

10:24AM 13 Q. AND IF YOU GO TO THE NEXT PAGE, DR. GOLUB WRITES, "ANOTHER

10:24AM 14 ISSUE IS WHETHER THEY CAN WORK WITH THERANOS DIRECTLY WITHOUT

10:24AM 15 WAG? I DON'T BELIEVE I GOT A GOOD ANSWER FOR THIS. AS WE

10:24AM 16 DISCUSSED, IT WAS MY IMPRESSION THAT THEY WERE CONSIDERING THIS

10:24AM 17 DURING THE VISIT TO OUR STORE."

10:24AM 18 DO YOU SEE THAT?

10:24AM 19 A. YES, SIR.

10:24AM 20 Q. AND SO DO YOU UNDERSTAND THAT DR. GOLUB IS TALKING ABOUT

10:24AM 21 HOW GENENTECH, WHETHER THEY SHOULD BE WORKING DIRECTLY WITH

10:25AM 22 THERANOS OR INCLUDING WALGREENS AS WELL; CORRECT?

10:25AM 23 A. CORRECT.

10:25AM 24 Q. AND THEN YOU RESPONDED TO THAT EMAIL ALSO ON JANUARY 2ND.

10:25AM 25 DO YOU SEE THAT?

10:25AM 1 A. YES.

10:25AM 2 Q. AND YOU WROTE, "THANKS HOWARD. WE SHOULD NOT HAVE

10:25AM 3 THERANOS AND GNE WORK WITHOUT US. THERE IS A REVENUE STREAM

10:25AM 4 THAT WE WILL LOSE IF THE PATIENTS ARE NOT COMING TO THE STORES

10:25AM 5 FOR THE THERANOS SERVICE."

10:25AM 6 RIGHT?

10:25AM 7 A. YES.

10:25AM 8 Q. AND THEN MS. GREEN RESPONDS ABOVE THAT AND SAYS, "NIM --

10:25AM 9 CASEY SENT A GREAT EMAIL TO THE THERANOS TEAM INDICATING WE

10:25AM 10 NEEDED TO BE INCLUDED IN ANY DISCUSSIONS RIGHT AFTER THE

10:25AM 11 MEETING IN DECEMBER. I ALSO HAVEN'T GIVEN THE GNE TEAM AND

10:25AM 12 DIRECT CONTACT INFORMATION FOR THERANOS."

10:25AM 13 DO YOU SEE THAT?

10:25AM 14 A. YES, SIR.

10:25AM 15 Q. SO WALGREENS WANTS TO MAKE SURE THAT IF THIS CLINICAL

10:25AM 16 TRIAL WORK FOR THIS COMPANY, GENENTECH, GOES FORWARD, THAT

10:26AM 17 WALGREENS IS NOT GOING TO BE SOMEHOW CUT OUT OF THE LOOP;

10:26AM 18 RIGHT?

10:26AM 19 A. CORRECT.

10:26AM 20 Q. AND THAT IF THERE'S A REVENUE STREAM FROM THE CLINICAL

10:26AM 21 TRIAL PATIENTS GETTING THEIR BLOOD TESTS, WALGREENS WAS GOING

10:26AM 22 TO CAPTURE SOME OF THAT FEE?

10:26AM 23 A. THAT'S CORRECT.

10:26AM 24 Q. OKAY. AND THAT'S IN EARLY JANUARY '15; RIGHT?

10:26AM 25 A. THAT IS.

10:26AM 1 Q. OKAY. AND LET'S CONTINUE ON THE SUBJECT OF PHARMACEUTICAL
10:26AM 2 COMPANIES. LET'S GO TO 20568.

10:26AM 3 AND YOU SEE 20568 IS AN EMAIL BETWEEN CASEY KOZLOWSKI AND
10:26AM 4 JEFF BLICKMAN.

10:26AM 5 DO YOU SEE THAT?

10:26AM 6 A. YES, SIR.

10:26AM 7 Q. AND IT'S REGARDING A MEETING WITH ABBOTT?

10:26AM 8 A. YES.

10:26AM 9 Q. AND DO YOU UNDERSTAND THAT ABBOTT IS ANOTHER
10:26AM 10 PHARMACEUTICAL COMPANY?

10:26AM 11 A. YES.

10:26AM 12 Q. AND WE TALKED ABOUT MR. KOZLOWSKI THE LAST TIME WE WERE
10:26AM 13 HERE?

10:26AM 14 A. MS. KOZLOWSKI.

10:26AM 15 Q. MS. KOZLOWSKI, I'M SORRY.

10:27AM 16 WELL, WE TALKED ABOUT HER THE LAST TIME; RIGHT?

10:27AM 17 AND SHE WAS SOMEONE WHO WORKED FOR YOU ON THE
10:27AM 18 THERANOS-WALGREENS PROJECT; RIGHT?

10:27AM 19 A. CORRECT. SHE REPORTED TO ME AND WAS DIRECTLY RESPONSIBLE
10:27AM 20 FOR THE OPERATIONS OF THERANOS.

10:27AM 21 Q. OKAY. AND IN THIS CASE SHE'S SENDING AN EMAIL TO
10:27AM 22 MR. BLICKMAN; RIGHT?

10:27AM 23 A. YES, SIR.

10:27AM 24 Q. AND DURING THIS TIME, THERE WERE LOTS OF EMAILS EXCHANGED
10:27AM 25 BETWEEN PEOPLE WHO WORKED FOR YOU, LIKE CASEY KOZLOWSKI, AND

10:27AM 1 PEOPLE AT THERANOS, LIKE MR. BLICKMAN; RIGHT?

10:27AM 2 A. CORRECT.

10:27AM 3 Q. AND AT THE TIME THERE WAS THIS ONGOING RELATIONSHIP ON

10:27AM 4 BUILDING OUT STORES; RIGHT?

10:27AM 5 A. CORRECT. AT THIS POINT IN TIME WE, YOU KNOW, HAD HAD A

10:27AM 6 PARTNERSHIP THAT WE WERE CONTINUING TO BUILD OUT AND THE ENTIRE

10:27AM 7 THERANOS OPERATION.

10:27AM 8 Q. OKAY.

10:27AM 9 YOUR HONOR, WE OFFER EXHIBIT 20568.

10:27AM 10 MR. SCHENK: NO OBJECTION.

10:27AM 11 THE COURT: IT'S ADMITTED. IT MAY BE PUBLISHED.

10:27AM 12 (DEFENDANT'S EXHIBIT 20568 WAS RECEIVED IN EVIDENCE.)

10:27AM 13 BY MR. COOPERSMITH:

10:27AM 14 Q. AND THIS EMAIL FROM MS. KOZLOWSKI TO MR. BLICKMAN IS

10:28AM 15 JANUARY 30TH, 2015.

10:28AM 16 DO YOU SEE THAT?

10:28AM 17 A. YES, SIR.

10:28AM 18 Q. AND AGAIN THE SUBJECT IS MEETING WITH ABBOTT.

10:28AM 19 AND SHE WROTE, "HI JEFF,

10:28AM 20 "I KNOW YOU PARTICIPATED IN THE GENENTECH MEETING A WHILE

10:28AM 21 BACK. THERE'S ANOTHER ONE COMING UP (DATE TO BE DETERMINED),

10:28AM 22 AS WELL AS ONE WITH ABBOTT ON FEBRUARY 13TH TO TALK ABOUT USING

10:28AM 23 THERANOS STORES FOR A TEST TRIAL."

10:28AM 24 DO YOU SEE THAT?

10:28AM 25 A. YES.

10:28AM 1 Q. "WOULD THOSE BE MEETINGS YOU WOULD LIKE TO ATTEND OR WOULD
10:28AM 2 IT BE SOMEONE ELSE FROM THE THERANOS TEAM?"
10:28AM 3 DO YOU SEE THAT?
10:28AM 4 A. YES.
10:28AM 5 Q. AND SO THIS IS TRYING TO GET ANOTHER MEETING GOING WITH
10:28AM 6 REGARD TO MORE CLINICAL TRIAL WORK, THIS TIME WITH A DIFFERENT
10:28AM 7 COMPANY CALLED ABBOTT; CORRECT?
10:28AM 8 A. JUST TO HELP EVERYONE UNDERSTAND, AT WALGREENS WE'RE
10:28AM 9 CONTINUALLY WORKING WITH MANUFACTURERS, PHARMA COMPANIES, AND
10:28AM 10 NOT ONLY BECAUSE WE PURCHASE MEDICATION FROM THEM, BUT ALSO
10:28AM 11 WE'RE TRYING TO FIGURE OUT HOW WE CAN WORK MORE CLOSELY WITH
10:28AM 12 THEM IN PARTNERSHIP FOR BETTER PATIENT CARE.
10:28AM 13 SO IN THIS PARTICULAR INSTANCE, IT'S WITH ABBOTT, AND THE
10:29AM 14 TEAM THAT OVERSEES THIS IS THAT BIOPHARMACEUTICAL TEAM THAT WE
10:29AM 15 REFERRED TO BEFORE.
10:29AM 16 BUT THESE WERE DISCUSSIONS THAT WERE ONGOING WITH
10:29AM 17 DIFFERENT MANUFACTURERS, AND IN THIS CASE GENENTECH, ABBOTT,
10:29AM 18 AND IN THOSE DISCUSSIONS THE THERANOS PROJECT HAS BEEN
10:29AM 19 DISCUSSED.
10:29AM 20 Q. OKAY. THANK YOU.
10:29AM 21 YOUR HONOR, I HAVE ANOTHER EXHIBIT AGAIN ON THE SAME
10:29AM 22 TOPIC, BUT I DON'T KNOW IF IT'S IN THE BINDERS, SO CAN I HAND
10:29AM 23 IT UP AND ALSO APPROACH THE WITNESS?
10:29AM 24 THE COURT: SURE.
10:29AM 25 WHAT NUMBER IS IT?

10:29AM 1 MR. COOPERSMITH: OH, SORRY, YOUR HONOR. IT'S
10:29AM 2 20542.
10:29AM 3 (HANDING.)
10:30AM 4 Q. OKAY. MR. JHAVERI, LOOKING AT THE EXHIBIT THAT I'VE JUST
10:30AM 5 HANDED YOU, EXHIBIT 20542, DO YOU SEE THIS IS AN EMAIL STRING
10:30AM 6 FROM FEBRUARY OF 2015?
10:30AM 7 A. YES.
10:30AM 8 Q. AND AT THE VERY FIRST EMAIL ON THE FIRST PAGE, THE EMAIL
10:30AM 9 IS ACTUALLY A MEETING INVITE, AND IT GOES TO SOMEONE NAMED
10:30AM 10 CHRISTIAN HOLMES.
10:30AM 11 DO YOU SEE THAT?
10:30AM 12 A. YES, I DO.
10:30AM 13 Q. AND YOU KNOW WHO MR. HOLMES WAS; RIGHT?
10:30AM 14 A. YES.
10:30AM 15 Q. HE WORKED AT THERANOS?
10:30AM 16 A. CORRECT.
10:30AM 17 Q. AND HE WAS INVOLVED, ALONG WITH OTHERS, IN THE
10:30AM 18 THERANOS-WALGREENS RELATIONSHIP; RIGHT?
10:30AM 19 A. YES.
10:30AM 20 Q. AND THEN IF WE GO TO THE EMAIL BELOW THAT, WE SEE
10:30AM 21 MR. BLICKMAN AGAIN; RIGHT?
10:30AM 22 A. YES, I DO.
10:30AM 23 Q. AND ANOTHER PERSON WHO WE DISCUSSED WAS INVOLVED IN THAT
10:31AM 24 SAME RELATIONSHIP; RIGHT?
10:31AM 25 A. I'M SORRY. WHO ARE YOU REFERRING TO?

10:31AM 1 Q. OH, IT'S THE SECOND EMAIL ON THE FIRST PAGE, MR. JHAVERI.

10:31AM 2 A. OKAY.

10:31AM 3 Q. DO YOU SEE MR. BLICKMAN'S NAME THERE?

10:31AM 4 A. YES, I DO.

10:31AM 5 Q. AND THAT'S ANOTHER PERSON WHO YOU UNDERSTAND WORKED AT

10:31AM 6 THERANOS AND WAS INVOLVED WITH THIS RELATIONSHIP; RIGHT?

10:31AM 7 A. YES.

10:31AM 8 Q. AND THEN THERE'S OTHER PEOPLE FROM WALGREENS SUCH AS

10:31AM 9 ANTHONY BROGNO.

10:31AM 10 DO YOU SEE THAT?

10:31AM 11 A. YES, I DO.

10:31AM 12 Q. AND MR. BROGNO WAS A CLINICAL RESEARCH MANAGER AT

10:31AM 13 WALGREENS?

10:31AM 14 A. YES.

10:31AM 15 Q. AND THIS RELATES TO ANOTHER OPPORTUNITY INVOLVING PFIZER;

10:31AM 16 CORRECT?

10:31AM 17 A. YES, IT DOES.

10:31AM 18 MR. COOPERSMITH: YOUR HONOR, WE OFFER 20542.

10:31AM 19 MR. SCHENK: YOUR HONOR, OBJECTION. HEARSAY.

10:31AM 20 I DON'T THINK THIS IS A BUSINESS RECORD, AND THE

10:31AM 21 FEBRUARY 9TH EMAIL, THE BOTTOM ONE ON THE FIRST PAGE CONTAINS

10:31AM 22 ADDITIONAL HEARSAY.

10:31AM 23 THE COURT: DID YOU WANT TO REDACT THIS OR --

10:32AM 24 MR. COOPERSMITH: WELL, YOUR HONOR, I'D LIKE TO

10:32AM 25 OFFER IT AS AN 803(6) BUSINESS RECORD. IT GOES AMONG PEOPLE

10:32AM 1 INVOLVED IN THIS PARTNERSHIP.

10:32AM 2 THE COURT: WELL, WHY DON'T YOU LAY A FOUNDATION IF

10:32AM 3 YOU CAN.

10:32AM 4 MR. COOPERSMITH: I CAN DO THAT, YOUR HONOR. I'LL

10:32AM 5 TRY. THANK YOU.

10:32AM 6 Q. OKAY. SO, MR. JHAVERI, AS WE'VE DISCUSSED, IN THIS TIME

10:32AM 7 PERIOD, IN THIS CASE FEBRUARY 2015, THERE'S AN ONGOING

10:32AM 8 PARTNERSHIP BETWEEN WALGREENS AND THERANOS; CORRECT?

10:32AM 9 A. YES.

10:32AM 10 Q. AND IN THE COURSE OF THAT PARTNERSHIP, THERE WERE A LOT OF

10:32AM 11 EMAILS EXCHANGED AMONG DIFFERENT PEOPLE TO TRY TO MOVE THE

10:32AM 12 PROJECT FORWARD; CORRECT?

10:32AM 13 A. YES.

10:32AM 14 Q. AND WHEN OPPORTUNITIES AROSE IN CONNECTION WITH THINGS

10:32AM 15 RELEVANT TO THE PARTNERSHIP, INFORMATION ABOUT THAT OPPORTUNITY

10:32AM 16 MIGHT BE TRANSMITTED BY EMAIL; CORRECT?

10:32AM 17 A. YES.

10:32AM 18 Q. AND IN THIS CASE THAT'S WHAT WAS GOING ON; RIGHT?

10:32AM 19 A. YES.

10:32AM 20 Q. AND IN THOSE DISCUSSIONS FROM -- WELL, IN THOSE

10:32AM 21 DISCUSSIONS, IT WAS IMPORTANT, AS YOU UNDERSTOOD IT, FOR

10:33AM 22 EVERYONE TO BE ACCURATE AS THEY COULD BE, TO CONVEY INFORMATION

10:33AM 23 SO THAT PEOPLE COULD ACT ON IT IF APPROPRIATE?

10:33AM 24 A. THAT'S CORRECT.

10:33AM 25 Q. AND THE EMAILS WERE STORED IN THE NORMAL COURSE SO THAT IF

10:33AM 1 ANYONE NEEDED TO REFER TO SOMETHING THAT WAS INCLUDED IN AN
10:33AM 2 EMAIL, SUCH AS THE ONE THAT WE'RE LOOKING AT, THAT COULD BE
10:33AM 3 DONE; CORRECT?
10:33AM 4 A. YES.
10:33AM 5 MR. COOPERSMITH: YOUR HONOR, AGAIN, WE OFFER 20542.
10:33AM 6 MR. SCHENK: YOUR HONOR, SAME OBJECTION.
10:33AM 7 THERE'S A THIRD PARTY ON THIS CHAIN AND THERE ARE
10:33AM 8 REPRESENTATIONS ABOUT THE THIRD PARTY ON THIS CHAIN. THAT IS
10:33AM 9 NOT PART OF THE BUSINESS RECORDS FOUNDATION THAT MR. JHAVERI
10:33AM 10 CAN LAY.
10:33AM 11 MR. COOPERSMITH: YOUR HONOR, THERE'S BEEN NUMEROUS,
10:33AM 12 NUMEROUS EXHIBITS ADMITTED DURING THIS TRIAL WITH THIRD
10:33AM 13 PARTIES, OVER OBJECTION OR WITHOUT OBJECTION.
10:33AM 14 I'M NOT SURE I UNDERSTAND THAT OBJECTION AT ALL, AND WE
10:33AM 15 WOULD --
10:33AM 16 THE COURT: WELL, LET ME ASK THIS QUESTION: YOU
10:33AM 17 ASKED THIS WITNESS REGARDING THE COMMUNICATIONS BETWEEN
10:33AM 18 THERANOS AND WALGREENS, AND THIS IS NOT RELATED TO THAT
10:34AM 19 RELATIONSHIP, IS IT?
10:34AM 20 MR. COOPERSMITH: I CAN ASK HIM THAT QUESTION,
10:34AM 21 YOUR HONOR, IF THAT WOULD HELP.
10:34AM 22 I THINK IT IS.
10:34AM 23 THE COURT: WELL, IN YOUR PREFACE, YOU SAID -- YOU
10:34AM 24 TALKED WITH THE WITNESS ABOUT THE ONGOING RELATIONSHIP.
10:34AM 25 THIS SEEMS TO SPEAK OF A RELATIONSHIP WITH ANOTHER

10:34AM 1 COMPANY.

10:34AM 2 MR. COOPERSMITH: YOUR HONOR, I THINK IT'S NO

10:34AM 3 DIFFERENT THAN THE ABBOTT AND GENENTECH SITUATIONS, BUT I THINK

10:34AM 4 I CAN ASK A FEW MORE QUESTIONS.

10:34AM 5 THE COURT: SURE. WHY DON'T YOU? WHY DON'T YOU?

10:34AM 6 MR. COOPERSMITH: SURE, YOUR HONOR. I'M HAPPY TO.

10:34AM 7 Q. MR. JHAVERI, I THINK WE TALKED EARLIER, AND EVEN THE LAST

10:34AM 8 TIME WE MET TWO WEEKS AGO, ABOUT THE CONTRACTS BETWEEN

10:34AM 9 WALGREENS AND THERANOS; RIGHT?

10:34AM 10 A. YES.

10:34AM 11 Q. AND ONE OF THE THINGS IN THE CONTRACT, AS WE'VE DISCUSSED,

10:34AM 12 WAS THIS POSSIBILITY THAT CLINICAL TRIAL PATIENTS COULD HAVE

10:34AM 13 THEIR BLOOD TESTED AT THERANOS STORES THAT WERE -- OR WALGREENS

10:34AM 14 STORES THAT HAD THERANOS COLLECTION SITES; RIGHT?

10:35AM 15 A. CORRECT.

10:35AM 16 Q. AND THAT WAS ANOTHER, AS WE SAW IN THE EXHIBIT THAT WAS

10:35AM 17 PREVIOUSLY ADMITTED, THAT WAS ANOTHER POTENTIAL REVENUE

10:35AM 18 OPPORTUNITY; CORRECT?

10:35AM 19 A. YES.

10:35AM 20 Q. FOR WALGREENS?

10:35AM 21 A. YES.

10:35AM 22 Q. AND FOR THERANOS?

10:35AM 23 A. CORRECT.

10:35AM 24 Q. AND THAT WHEN OPPORTUNITIES AROSE WITH COMPANIES LIKE

10:35AM 25 PFIZER THAT MIGHT NEED TO DO CLINICAL TRIAL WORK USING THIS

10:35AM 1 SERVICE, THAT WOULD BE OF INTEREST TO THE PARTNERSHIP; RIGHT?

10:35AM 2 A. YES. IF WE HAD DISCUSSIONS WITH A PHARMACEUTICAL COMPANY,

10:35AM 3 OR ANY PARTNER FOR THAT MATTER, OTHER THAN THERANOS, AND THERE

10:35AM 4 WAS AN OPPORTUNITY FOR ALL OF US TO WORK TOGETHER, WHATEVER

10:35AM 5 THAT COULD BE, IN THIS CASE CLINICAL TRIAL, CERTAINLY WE WOULD

10:35AM 6 MAKE THAT INTRODUCTION AND HAVE THAT DISCUSSION TO SEE IF

10:35AM 7 THERE'S AN OPPORTUNITY.

10:35AM 8 Q. RIGHT. AND IN THIS CASE, LOOKING AT EXHIBIT 20542, THIS

10:35AM 9 IS ONE OF THOSE OPPORTUNITIES, IT HAPPENS TO BE WITH PFIZER,

10:35AM 10 WHERE WALGREENS IS BRINGING THIS TO THE ATTENTION OF THERANOS

10:35AM 11 TO SEE THERE IS AN OPPORTUNITY FOR THERANOS AND WALGREENS TO

10:35AM 12 GET INVOLVED WITH A PFIZER PROJECT; CORRECT?

10:35AM 13 A. CORRECT. WHAT THIS IS IN REFERENCE TO IS, YOU KNOW, IS

10:36AM 14 THERE A POSSIBILITY FOR PFIZER, THERANOS, AND WALGREENS

10:36AM 15 REPRESENTATIVES TO WHITE BOARD, TO BRAINSTORM, SEE IF THERE WAS

10:36AM 16 AN IDEA THAT POTENTIALLY WE CAN DO TOGETHER, AND THAT'S WHAT

10:36AM 17 THIS IS IN REFERENCE TO.

10:36AM 18 Q. OKAY. AND PART OF THE EMAIL THAT WE'RE LOOKING AT, 20542,

10:36AM 19 IS IF THERE WAS INFORMATION COMING FROM PFIZER IN THE COURSE OF

10:36AM 20 THE BUSINESS RELATIONSHIP WITH THERANOS, WALGREENS WOULD WANT

10:36AM 21 TO PASS THAT INFORMATION ON TO THERANOS SO THAT WALGREENS AND

10:36AM 22 THERANOS COULD DISCUSS HOW BEST TO PROCEED, IF AT ALL; RIGHT?

10:36AM 23 A. YES.

10:36AM 24 JUST, AGAIN, TO REEXPLAIN.

10:36AM 25 ANTHONY BROGNO WAS PART OF THE PHARMACEUTICAL,

10:36AM 1 BIOPHARMACEUTICAL TEAM THAT INTERACTS WITH PHARMACEUTICAL
10:36AM 2 COMPANIES ON A DAILY BASIS.

10:36AM 3 AND IN THOSE DISCUSSIONS, IF THERE WAS AN OPPORTUNITY TO
10:36AM 4 WORK WITH OTHER PARTS OF WALGREENS WITH OTHER PARTNERS THAT WE
10:36AM 5 HAVE, THEY WOULD BRING IT TO THE APPROPRIATE INDIVIDUAL'S
10:36AM 6 ATTENTION.

10:36AM 7 AND SO THAT'S WHAT THIS IS IN REFERENCE TO.

10:37AM 8 Q. OKAY. THANK YOU.

10:37AM 9 AND YOU KNOW MR. BROGNO, IN THE COURSE OF HIS DUTIES, HE
10:37AM 10 WOULD HAVE TO INTERACT FREQUENTLY WITH PHARMACEUTICAL
10:37AM 11 COMPANIES; CORRECT?

10:37AM 12 A. WHATEVER IS IN HIS RESPONSIBILITIES, CORRECT.

10:37AM 13 Q. RIGHT. AND JUST LIKE PERHAPS EVERYONE ELSE IN THE MODERN
10:37AM 14 WORLD, HE WOULD DO THAT OFTEN BY EMAIL; RIGHT?

10:37AM 15 A. YES.

10:37AM 16 Q. AND THIS IS ONE EXAMPLE OF HIM SENDING AN EMAIL; RIGHT?

10:37AM 17 A. CORRECT.

10:37AM 18 Q. AND THAT IT'S ALSO -- WHEN -- YOU UNDERSTAND THAT WHEN
10:37AM 19 ANYBODY AT WALGREENS WHO HAS A JOB TO DO, IN THIS CASE
10:37AM 20 MR. BROGNO INTERACTING WITH PHARMACEUTICAL COMPANIES, THEY
10:37AM 21 WOULD NEED TO BE AS ACCURATE AS THEY CAN BE IN THEIR BUSINESS
10:37AM 22 DEALINGS SO THAT THEY COULD MAKE SURE THAT PEOPLE ACT ON
10:37AM 23 ACCURATE INFORMATION AS OPPOSED TO SOMETHING ELSE; RIGHT?

10:37AM 24 A. I WOULD CERTAINLY HOPE SO, YES.

10:37AM 25 Q. AND THESE RECORDS ARE MAINTAINED AT WALGREENS SO THAT

10:37AM 1 PEOPLE CAN REFER BACK TO IT IF NECESSARY; RIGHT?

10:38AM 2 A. IN REFERENCE TO THE EMAILS, CORRECT.

10:38AM 3 MR. COOPERSMITH: YOUR HONOR, AGAIN, WE OFFER 20542.

10:38AM 4 MR. SCHENK: SAME HEARSAY OBJECTION.

10:38AM 5 THE COURT: I'LL ALLOW THIS TO COME IN OVER

10:38AM 6 OBJECTION.

10:38AM 7 IT'S ADMITTED, AND IT MAY BE PUBLISHED.

10:38AM 8 (DEFENDANT'S EXHIBIT 20542 WAS RECEIVED IN EVIDENCE.)

10:38AM 9 BY MR. COOPERSMITH:

10:38AM 10 Q. OKAY. MR. JHAVERI, LET'S START WITH THE EARLIEST ONE IN

10:38AM 11 TIME, WHICH I THINK APPEARS ON PAGE 2.

10:38AM 12 YOU SEE THAT THIS IS AN EMAIL FROM MAYA HARDIGAN AT

10:38AM 13 PFIZER; IS THAT RIGHT?

10:38AM 14 A. YES.

10:38AM 15 Q. AND IT'S DATED JANUARY 22ND, 2015; RIGHT?

10:38AM 16 A. YES.

10:38AM 17 Q. AND SHE INCLUDES A NUMBER OF PEOPLE ON THE EMAIL, AND ONE

10:38AM 18 OF THEM, I THINK IT'S THE LAST PERSON ON THE TO LINE, IS

10:38AM 19 CASEY KOZLOWSKI.

10:38AM 20 DO YOU SEE THAT?

10:38AM 21 A. YES, I DO.

10:38AM 22 Q. AND THAT'S THE PERSON THAT WORKED FOR YOU THAT WE

10:38AM 23 DISCUSSED EARLIER; RIGHT?

10:39AM 24 A. YES.

10:39AM 25 Q. AND THEN IF YOU GO -- DO YOU SEE THE NAME CRAIG LIPSET?

10:39AM 1 A. YES.

10:39AM 2 Q. AND DO YOU SEE ANYWHERE ON THIS EMAIL THE NAME

10:39AM 3 SHANE WEBER?

10:39AM 4 A. ONE SECOND. I'M JUST REVIEWING IT.

10:39AM 5 Q. SURE.

10:39AM 6 (PAUSE IN PROCEEDINGS.)

10:39AM 7 THE WITNESS: I DO NOT.

10:39AM 8 BY MR. COOPERSMITH:

10:39AM 9 Q. OKAY. IF YOU GO TO THE SUBJECT OF THE EMAIL, THE SUBJECT

10:39AM 10 IS WALGREENS/PFIZER WHITE BOARD SESSION.

10:39AM 11 DO YOU SEE THAT?

10:39AM 12 A. YES, I DO.

10:39AM 13 Q. AND WHAT WE'RE LOOKING AT IS ONE OF THESE CALENDAR NOTICES

10:39AM 14 OR MEETING NOTICES; RIGHT?

10:39AM 15 A. YES, CORRECT.

10:39AM 16 Q. AND IT SAYS, "DEAR ALL,

10:39AM 17 "I AM HOLDING THIS TIME FOR A PFIZER/WALGREENS/THERANOS

10:40AM 18 WHITE BOARD SESSION, TO FOCUS ON THE FOLLOWING TOPICS."

10:40AM 19 DO YOU SEE THAT?

10:40AM 20 A. I DO.

10:40AM 21 Q. AND THIS IS COMING FROM MS. HARDIGAN, WHO IS SOMEONE WHO

10:40AM 22 WORKS FOR PFIZER; CORRECT?

10:40AM 23 A. CORRECT, AT THAT TIME.

10:40AM 24 Q. RIGHT. AND SHE HAS SOME BULLET POINTS UNDER THAT, AND THE

10:40AM 25 FIRST ONE SAYS, "REVIEWING PFIZER'S PROPOSED SCOPE AND MODEL

10:40AM 1 FOR THE WALGREENS PILOT."

10:40AM 2 DO YOU SEE THAT?

10:40AM 3 A. YES.

10:40AM 4 Q. "MAPPING A PATIENT FLOW AGAINST THE PILOT STRUCTURE."

10:40AM 5 AND THEN, "FURTHER UNDERSTANDING WALGREENS'S CAPABILITIES

10:40AM 6 AGAINST DESIRED PATIENT FLOW (EG, WHAT ABILITY DOES WALGREENS

10:40AM 7 HAVE TO PULL BACK PATIENT MEDICAL HISTORIES TO VALIDATE

10:40AM 8 INCLUSION CRITERIA," AND THEN IT GOES ON.

10:40AM 9 DO YOU SEE THAT?

10:40AM 10 A. YES, I DO.

10:40AM 11 Q. AND THEN THE LAST ONE IS, "BRAINSTORM OF KEY METRICS TO BE

10:40AM 12 CAPTURED AND MEASURED -- AS A BASIS FOR COMPARISON TO OUR

10:40AM 13 TRADITIONAL CLINIC-BASED STUDY APPROACH."

10:41AM 14 DO YOU SEE THAT?

10:41AM 15 A. YES, I DO.

10:41AM 16 Q. AND SO THIS IS A MEETING NOTICE. IT DISCUSSES THE IDEA OF

10:41AM 17 DOING SOME CLINICAL TRIAL STUDY WORK USING THE

10:41AM 18 THERANOS-WALGREENS SERVICES; RIGHT?

10:41AM 19 A. THAT'S WHAT IT SEEMS LIKE, YES.

10:41AM 20 Q. RIGHT. AND IF YOU GO TO THE FIRST PAGE, YOU SEE THAT

10:41AM 21 THERE'S A -- I'M SORRY.

10:41AM 22 I JUST WANT TO CORRECT SOMETHING BECAUSE I MISREAD IT. I

10:41AM 23 DON'T WANT TO BE INACCURATE IN ANY WAY.

10:41AM 24 DO YOU SEE ON PAGE 2, GOING BACK TO THAT, DO YOU SEE THAT

10:41AM 25 MS. HARDIGAN, MAYA HARDIGAN, DO YOU SEE THAT?

10:41AM 1 A. YES.

10:41AM 2 Q. AND SHE HAS AN EMAIL ADDRESS THAT SAYS MAIL TO:

10:41AM 3 MAYADHARDIGAN@PFIZER.COM?

10:41AM 4 A. YES.

10:41AM 5 Q. OKAY. AND IF YOU GO TO THE FIRST PAGE, IT SAYS FROM

10:42AM 6 ANTHONYBROGNO@WALGREENS.COM; RIGHT?

10:42AM 7 A. THAT'S CORRECT.

10:42AM 8 Q. OKAY. AND THEN IT SAYS, THOUGH, ON BEHALF OF HARDIGAN,

10:42AM 9 MAYA; RIGHT?

10:42AM 10 A. CORRECT.

10:42AM 11 Q. AND MAYBE THERE'S NO EXPLANATION HERE, BUT MR. BROGNO

10:42AM 12 WORKS AT WALGREENS; RIGHT?

10:42AM 13 A. YES.

10:42AM 14 Q. BUT MS. HARDIGAN WORKS AT PFIZER?

10:42AM 15 A. THAT'S CORRECT.

10:42AM 16 Q. OKAY.

10:42AM 17 A. THIS IS ACTUALLY, JUST TO CLARIFY, IT'S A FORWARD OF THE

10:42AM 18 INVITE, WHICH IS WHY IT READS THAT WAY.

10:42AM 19 Q. I SEE. OKAY. THANK YOU FOR CLARIFYING THAT.

10:42AM 20 AND THEN YOU GO DOWN BELOW THAT AND MR. BROGNO WRITES, "HI

10:42AM 21 JEFF,

10:42AM 22 "ALLOW ME TO INTRODUCE MYSELF. MY NAME IS ANTHONY BROGNO,

10:42AM 23 I AM A CLINICAL RESEARCH MANAGER WITH WALGREENS. I'VE WORKED

10:42AM 24 CLOSELY WITH CASEY KOZLOWSKI WHILE IMPLEMENTING CLINICAL TRIALS

10:42AM 25 WITHIN OUR STORES. FRIDAY, FEBRUARY 13TH, WALGREENS AND PFIZER

10:42AM 1 ARE MEETING FACE-TO-FACE TO DISCUSS POTENTIAL OPPORTUNITIES TO
10:43AM 2 COLLABORATE AND BRING CLINICAL TRIALS TO OUR STORES."

10:43AM 3 DO YOU SEE THAT?

10:43AM 4 A. YES, SIR.

10:43AM 5 Q. AND THEN IF YOU GO ON TO THE NEXT PARAGRAPH, THE SECOND
10:43AM 6 SENTENCE READS, "THEY" MEANING PFIZER "ARE VERY INTERESTED IN
10:43AM 7 THE THERANOS TECHNOLOGY AND WOULD LIKE FOR YOU TO JOIN TO
10:43AM 8 PROVIDE SOME INSIGHT TO THE TECHNOLOGY/ABILITY TO UTILIZE THE
10:43AM 9 TECHNOLOGY FOR THIS TRIAL."

10:43AM 10 DO YOU SEE THAT?

10:43AM 11 A. YES.

10:43AM 12 Q. AND THAT'S MR. BROGNO REPORTING TO THERANOS ABOUT PFIZER'S
10:43AM 13 INTEREST; CORRECT?

10:43AM 14 A. YES.

10:43AM 15 Q. OKAY. OKAY. LET'S RETURN TO THE EXHIBIT WHERE WE
10:43AM 16 STARTED, WHICH IS 2275, GOING BACK TO THE ONGOING PARTNERSHIP
10:43AM 17 WITH THERANOS AND WALGREENS.

10:44AM 18 OKAY. I THINK WE'RE ABOUT DONE WITH THIS EXHIBIT, BUT I
10:44AM 19 JUST WANT TO NOTE THAT THE REFERENCE TO GENENTECH IN THE FIRST
10:44AM 20 SENTENCE, THAT HAS TO DO WITH THE DISCUSSION THAT WE HAVE JUST
10:44AM 21 GONE THROUGH ABOUT THESE PHARMACEUTICAL TRIALS; RIGHT?

10:44AM 22 A. YES.

10:44AM 23 Q. AND THIS WAS AN EMAIL THAT YOU WERE SENDING TO MR. BALWANI
10:44AM 24 IN DECEMBER OF 2014; RIGHT?

10:44AM 25 A. YES.

10:44AM 1 Q. OKAY. LET'S GO TO ANOTHER ISSUE THAT WE TALKED ABOUT
10:44AM 2 EARLIER, AND THAT WAS -- THERE WAS, AS WE DISCUSSED, IN THIS
10:44AM 3 FALL OF 2014 TIME PERIOD, A DISCUSSION THAT WAS BEGINNING TO
10:44AM 4 CHANGE THE BUSINESS MODEL TO SOME EXTENT BETWEEN WALGREENS AND
10:44AM 5 THERANOS; RIGHT?
10:44AM 6 A. AROUND WHICH TIMEFRAME?
10:44AM 7 Q. AROUND THE FALL OF '14.
10:44AM 8 A. AROUND THE FALL OF '14, YES.
10:44AM 9 AGAIN, AS WE WERE LEARNING MORE AND WE WERE CONTINUING TO
10:44AM 10 LEARN MORE THROUGHOUT THIS PILOT, WE PIVOTED, WE CHANGED, WE
10:45AM 11 IMPROVED, AND THAT'S WHAT WE WERE DOING, WE WERE CONSTANTLY
10:45AM 12 DOING THAT.
10:45AM 13 Q. RIGHT. AND DO YOU REMEMBER WE LOOKED AT A DOCUMENT
10:45AM 14 EARLIER WHERE ONE WAY THAT WALGREENS HAD PROPOSED TO DEAL WITH
10:45AM 15 A COST ISSUE WAS TO RAISE THE FEE THAT WALGREENS WOULD GET FROM
10:45AM 16 \$10 TO \$15; RIGHT?
10:45AM 17 A. RIGHT. SO I JUST WANT TO BE CLEAR ABOUT RAISING THE FEE.
10:45AM 18 THAT WAS PART OF THE CONTRACT WITH THERANOS.
10:45AM 19 AND SO THE RAISING OF THE FEE WOULD BE WHAT WE WOULD GET
10:45AM 20 REMUNERATED FROM THERANOS PER PATIENT.
10:45AM 21 Q. RIGHT. SO, FOR EXAMPLE, IF SOMEONE CAME IN TO THERANOS
10:45AM 22 AND GOT BLOOD DRAWS AND IT COST \$50, UNDER THE EXISTING
10:45AM 23 CONTRACT, WALGREENS WOULD GET \$10 PER PATIENT; RIGHT?
10:45AM 24 A. CORRECT.
10:45AM 25 Q. AND UNDER THE PROPOSAL WE LOOKED AT EARLIER, WALGREENS

10:45AM 1 WOULD GET \$15 INSTEAD OF \$10; RIGHT?

10:45AM 2 A. THAT'S RIGHT.

10:45AM 3 Q. BUT WE TALKED ABOUT THERE ARE OTHER WAYS TO DEAL WITH THAT

10:45AM 4 COST ISSUE; RIGHT?

10:45AM 5 A. RIGHT. WHAT WE WERE DEALING WITH WAS -- COST WAS A

10:46AM 6 VARIABLE, AND WHAT WE WERE DEALING WITH WAS TO MAKE SURE THAT

10:46AM 7 THIS PARTICULAR PROJECT IS PROFITABLE, OR AT LEAST BREAK EVEN,

10:46AM 8 FOR BOTH ORGANIZATIONS.

10:46AM 9 AND SO COST WAS ONE OF THOSE DRIVERS.

10:46AM 10 OF COURSE REVENUE WAS ANOTHER DRIVER.

10:46AM 11 SO WE WERE TRYING TO MANAGE ALL OF THAT.

10:46AM 12 Q. OKAY. AND THEN THERE WERE SOME MEETINGS WITHIN WALGREENS

10:46AM 13 AT A VERY HIGH LEVEL TO DISCUSS THE NEW, POTENTIAL NEW BUSINESS

10:46AM 14 MODEL WITH THERANOS; RIGHT?

10:46AM 15 A. YES.

10:46AM 16 Q. AND IF YOU TAKE A LOOK AT EXHIBIT 2280, THAT'S A MEETING

10:46AM 17 NOTICE THAT YOU RECEIVED ON DECEMBER 10TH, 2014; RIGHT?

10:46AM 18 A. YES, SIR.

10:46AM 19 Q. AND IT'S A MEETING NOTICE THAT INCLUDES A NUMBER OF PEOPLE

10:46AM 20 IN LEADERSHIP AT WALGREENS?

10:46AM 21 A. YES.

10:46AM 22 Q. AND ALSO AT THERANOS?

10:46AM 23 A. THAT'S CORRECT.

10:46AM 24 Q. AND THAT INCLUDES MR. FLUEGEL; RIGHT?

10:47AM 25 A. YES.

10:47AM	1	Q. AND BRAD WASSON?
10:47AM	2	A. YES, SIR.
10:47AM	3	Q. AND YOURSELF?
10:47AM	4	A. CORRECT.
10:47AM	5	Q. AND ALEX GOURLAY?
10:47AM	6	A. YES.
10:47AM	7	Q. AND ALSO MR. BALWANI AND MS. HOLMES?
10:47AM	8	A. YES.
10:47AM	9	Q. OKAY.
10:47AM	10	YOUR HONOR, WE OFFER 2280.
10:47AM	11	MR. SCHENK: NO OBJECTION.
10:47AM	12	THE COURT: IT'S ADMITTED. IT MAY BE PUBLISHED.
10:47AM	13	(GOVERNMENT'S EXHIBIT 2280 WAS RECEIVED IN EVIDENCE.)
10:47AM	14	BY MR. COOPERSMITH:
10:47AM	15	Q. DO YOU SEE THAT THE SUBJECT IS COPY: 8:00 A.M. PT --
10:47AM	16	WALGREENS/THERANOS MEETING?
10:47AM	17	A. YES.
10:47AM	18	Q. AND DO YOU SEE SOME OF THE PEOPLE WHO WE JUST TALKED ABOUT
10:47AM	19	WHO ARE ON THE TO LINE AND SO FORTH?
10:47AM	20	A. YES.
10:47AM	21	Q. OKAY. AND THEN YOU SEE YOUR NAME THERE, TOO; RIGHT?
10:47AM	22	A. YES.
10:47AM	23	Q. I'M SORRY?
10:47AM	24	A. YES.
10:47AM	25	Q. THANK YOU.

10:47AM	1	AND THEN THERE ARE PEOPLE WHO ARE REQUIRED; RIGHT? AND
10:47AM	2	THAT'S STEWART WASSON, OR BRAD WASSON; CORRECT?
10:47AM	3	A. YES.
10:47AM	4	Q. AND YOURSELF?
10:48AM	5	A. CORRECT.
10:48AM	6	Q. AND THEN RICHARD ASHWORTH; RIGHT?
10:48AM	7	A. CORRECT.
10:48AM	8	Q. ALEX GOURLAY?
10:48AM	9	A. YES.
10:48AM	10	Q. AND THEN MR. BALWANI?
10:48AM	11	A. YES.
10:48AM	12	Q. AND MS. HOLMES?
10:48AM	13	A. CORRECT.
10:48AM	14	Q. OKAY. AND THEN THIS IS A MEETING THAT YOU ATTENDED;
10:48AM	15	RIGHT?
10:48AM	16	A. YES.
10:48AM	17	Q. AND THE MEETING WAS TO DISCUSS POTENTIAL NEW
10:48AM	18	RELATIONSHIP -- A NEW WAY TO HAVE A CONTRACT RELATIONSHIP
10:48AM	19	BETWEEN THERANOS AND WALGREENS; RIGHT?
10:48AM	20	A. CORRECT. WE WERE DISCUSSING, YOU KNOW, WHAT THE NEW
10:48AM	21	CONTRACT WOULD LOOK LIKE, WHAT ARE THE SPECIFICS OF THE
10:48AM	22	CONTRACT, AND OF COURSE WHAT THE MODEL WOULD LOOK LIKE AS WELL.
10:48AM	23	Q. OKAY. THIS WAS DECEMBER 10TH, 2014?
10:48AM	24	A. YES, SIR.
10:48AM	25	Q. HOW TO MOVE FORWARD WITH THERANOS?

10:48AM 1 A. CORRECT.

10:48AM 2 Q. ON THE SAME TOPIC, LET'S LOOK AT EXHIBIT 20237.

10:49AM 3 OKAY. IF YOU LOOK AT EXHIBIT 20237, YOU SEE THAT IT'S

10:49AM 4 FROM BRAD FLUEGEL?

10:49AM 5 A. YES, SIR.

10:49AM 6 Q. SENIOR VICE PRESIDENT CHIEF STRATEGY AND BUSINESS

10:49AM 7 DEVELOPMENT OFFICER; RIGHT?

10:49AM 8 A. YES.

10:49AM 9 Q. AT WALGREENS?

10:49AM 10 A. THAT'S CORRECT.

10:49AM 11 Q. AND IT'S TO MR. BALWANI WITH A COPY TO MS. HOLMES?

10:49AM 12 A. YES.

10:49AM 13 Q. AND IT'S DATED DECEMBER 15TH, 2014; RIGHT?

10:49AM 14 A. YES.

10:49AM 15 Q. AND SO THIS IS JUST FIVE DAYS AFTER THAT MEETING THAT WE

10:49AM 16 JUST DISCUSSED; RIGHT?

10:49AM 17 A. CORRECT.

10:49AM 18 Q. AND THIS IS ABOUT REPORTING OUT BY MR. FLUEGEL ABOUT SORT

10:49AM 19 OF AFTERMATH OF THE MEETING; CORRECT?

10:49AM 20 A. YES, SIR.

10:49AM 21 Q. OKAY.

10:49AM 22 YOUR HONOR, WE OFFER EXHIBIT 20237.

10:49AM 23 MR. SCHENK: NO OBJECTION.

10:49AM 24 THE COURT: IT'S ADMITTED. IT MAY BE PUBLISHED.

10:49AM 25 (DEFENDANT'S EXHIBIT 20237 WAS RECEIVED IN EVIDENCE.)

10:50AM 1 BY MR. COOPERSMITH:

10:50AM 2 Q. OKAY. JUST TO ORIENT HERE, WE SEE THE HEADER WITH THE

10:50AM 3 PEOPLE THAT WE JUST DISCUSSED; RIGHT?

10:50AM 4 A. CORRECT.

10:50AM 5 Q. AND THEN DECEMBER 15TH, 2014.

10:50AM 6 AND THEN THE SUBJECT IS FOLLOW UP; RIGHT?

10:50AM 7 A. YES.

10:50AM 8 Q. AND MR. FLUEGEL WRITES, "THANKS AGAIN FOR HOSTING US LAST

10:50AM 9 WEEK -- WE FOUND IT VERY PRODUCTIVE AND IT WAS GREAT TO SPEND

10:50AM 10 TIME WITH YOU BOTH."

10:50AM 11 DO YOU SEE THAT?

10:50AM 12 A. YES.

10:50AM 13 Q. AND IT SAYS, "AS ALEX MENTIONED" -- AND ALEX IS

10:50AM 14 ALEX GOURLAY; RIGHT?

10:50AM 15 A. CORRECT.

10:50AM 16 Q. AND THAT'S MR. FLUEGEL'S BOSS?

10:50AM 17 A. I BELIEVE SO AT THE TIME, YES.

10:50AM 18 Q. OKAY. "AS ALEX MENTIONED AT THE CLOSE OF THE MEETING, WE

10:50AM 19 WANTED TO CHECK IN WITH GREG AND STEFANO ON THE REVISED ROLLOUT

10:50AM 20 APPROACH WE LAID OUT AT THE MEETING."

10:50AM 21 DO YOU SEE THAT?

10:50AM 22 A. YES.

10:50AM 23 Q. AND GREG DO YOU UNDERSTAND IS A REFERENCE TO GREG WASSON?

10:50AM 24 A. YES, THAT'S CORRECT.

10:50AM 25 Q. AND HE'S THE CEO OF WALGREENS?

10:50AM 1 A. HE WAS THE CEO AT THE TIME.

10:50AM 2 Q. AND STEFANO, YOU KNOW WHO THAT IS, TOO, RIGHT?

10:50AM 3 A. YES.

10:50AM 4 Q. AND THAT'S THE PERSON WHO IS COMING IN TO BE CEO OF THE

10:51AM 5 ENTIRE OPERATION, THE BOOTS WALGREENS ALLIANCE; CORRECT?

10:51AM 6 A. YES.

10:51AM 7 Q. AND DO YOU REMEMBER STEFANO'S LAST NAME?

10:51AM 8 A. PESSINA, P-E-S-S-I-N-A.

10:51AM 9 Q. AND SO STEFANO PESSINA WAS GOING TO BE COMING IN AS THE

10:51AM 10 NEW CEO OF THE GOLD OPERATION; CORRECT?

10:51AM 11 A. CORRECT.

10:51AM 12 Q. AND HE'S BASED IN ITALY; CORRECT?

10:51AM 13 A. I'M NOT SURE EXACTLY WHERE HE IS BASED.

10:51AM 14 Q. OKAY. BUT THIS IS AS HIGH OF A LEVEL AT WALGREENS AS YOU

10:51AM 15 COULD POSSIBLY GET; RIGHT?

10:51AM 16 A. YES, SIR.

10:51AM 17 Q. AND TO GO ON, IT SAYS THAT -- MR. FLUEGEL WROTE, "WE

10:51AM 18 WANTED TO CHECK IN WITH GREG AND STEFANO ON THE REVISED ROLLOUT

10:51AM 19 APPROACH WE LAID OUT AT THE MEETING."

10:51AM 20 AND IT GOES ON, "THAT HAPPENED THIS WEEKEND AND THEY ARE

10:51AM 21 BOTH IN AGREEMENT WITH THE APPROACH WE DISCUSSED LAST WEEK."

10:51AM 22 DO YOU SEE THAT?

10:51AM 23 A. YES.

10:51AM 24 Q. AND SO MR. FLUEGEL IS REPORTING THAT BOTH CEO'S, IF YOU

10:51AM 25 WILL, WERE ON BOARD BASICALLY WITH THE APPROACH; RIGHT?

10:52AM 1 A. CORRECT.

10:52AM 2 Q. AND IT SAYS, "HAPPY TO TALK THIS THROUGH FURTHER, AS WELL

10:52AM 3 AS THE NEWS ON GREG'S DEPARTURE."

10:52AM 4 DO YOU SEE THAT?

10:52AM 5 A. YES.

10:52AM 6 Q. AND THE DEPARTURE IS THAT GREG WASSON WAS LEAVING

10:52AM 7 WALGREENS; RIGHT?

10:52AM 8 A. RIGHT.

10:52AM 9 Q. AND HE WASN'T GOING TO BE THE CEO ANYMORE?

10:52AM 10 A. THAT'S CORRECT.

10:52AM 11 Q. AND STEFANO WOULD BE THE CEO; RIGHT?

10:52AM 12 A. AT THAT TIME, YES.

10:52AM 13 Q. OKAY. NOW, LET'S TALK ABOUT WHAT THAT NEW BUSINESS

10:52AM 14 RELATIONSHIP WAS GOING TO LOOK LIKE, AND THE FIRST ONE I WANT

10:52AM 15 TO SHOW YOU ABOUT THAT IS EXHIBIT 2239, 2239.

10:53AM 16 A. 2239?

10:53AM 17 Q. I MISSPOKE. IT'S 2339. I MISSPOKE.

10:53AM 18 OKAY. AND YOU SEE THIS IS ANOTHER ONE OF THOSE

10:53AM 19 PARTNERSHIP MEETING SLIDE DECKS THAT WE'VE SEEN SOME EXAMPLES

10:53AM 20 OF BEFORE?

10:53AM 21 A. YES, SIR.

10:53AM 22 Q. AND THIS ONE IS FROM JANUARY 14TH, 2015?

10:53AM 23 A. YES.

10:53AM 24 Q. AND AGAIN, THE EMAIL, THE COVER PAGE, COMES FROM THE SAME

10:53AM 25 PERSON, PATTY HAWORTH; RIGHT?

10:53AM 1 A. YES, SIR.

10:53AM 2 MR. COOPERSMITH: YOUR HONOR, WE OFFER EXHIBIT 2339.

10:53AM 3 MR. SCHENK: NO OBJECTION.

10:53AM 4 THE COURT: IT'S ADMITTED. IT MAY BE PUBLISHED.

10:53AM 5 (GOVERNMENT'S EXHIBIT 2339 WAS RECEIVED IN EVIDENCE.)

10:53AM 6 BY MR. COOPERSMITH:

10:53AM 7 Q. OKAY. SO, MR. JHAVERI, THIS IS ACTUALLY THE FIRST MEETING

10:53AM 8 AFTER THAT MEETING WITH BRAD FLUEGEL AND OTHERS THAT WE JUST

10:53AM 9 DISCUSSED BEFORE THIS EXHIBIT; RIGHT?

10:54AM 10 A. YES, I BELIEVE SO.

10:54AM 11 Q. THE FIRST THERANOS PARTNERSHIP MEETING?

10:54AM 12 A. THE FIRST, RIGHT.

10:54AM 13 Q. OKAY. AND WE CAN SEE THE COVER PAGE, AND I THINK THE DATE

10:54AM 14 IS HIGHLIGHTED ON THE SCREEN.

10:54AM 15 AND AS USUAL, IT'S FROM PATTY HAWORTH TO A GROUP OF PEOPLE

10:54AM 16 WHO WERE WORKING ON THIS PROJECT; RIGHT?

10:54AM 17 A. THAT'S RIGHT.

10:54AM 18 Q. OKAY. AND THEN IF YOU GO TO PAGE 5, IT LOOKS LIKE THERE'S

10:54AM 19 AN AGENDA.

10:54AM 20 IF YOU BACK UP TWO PAGES, MR. ALLEN, THAT WOULD BE

10:54AM 21 HELPFUL. THERE YOU GO. IT LOOKS LIKE IT'S PAGE 3.

10:54AM 22 THIS IS THE AGENDA?

10:54AM 23 A. YES.

10:54AM 24 Q. DO YOU SEE THAT?

10:54AM 25 AND THERE'S GOING TO BE, AMONG OTHER THINGS, AN OPS MODEL

10:54AM 1 DISCUSSION.

10:54AM 2 DO YOU SEE THAT?

10:54AM 3 A. I DO.

10:54AM 4 Q. AND A CALIFORNIA UPDATE?

10:54AM 5 A. YES.

10:54AM 6 Q. AND THEN THIS STI INITIATIVE UPDATE; RIGHT?

10:55AM 7 A. CORRECT.

10:55AM 8 Q. OKAY. IF YOU GO TO THE NEXT PAGE, THERE'S A CURRENT

10:55AM 9 STATUS.

10:55AM 10 DO YOU SEE THAT?

10:55AM 11 A. I DO.

10:55AM 12 Q. AND IT LOOKED LIKE AVERAGE VISITS WERE UP 11 PERCENT;

10:55AM 13 RIGHT?

10:55AM 14 A. YES.

10:55AM 15 Q. NEXT PAGE HAS SOME HIGHLIGHTS.

10:55AM 16 DO YOU SEE THAT?

10:55AM 17 AND THE GUEST VOLUME IS INCREASING, AND SOME STORES ARE

10:55AM 18 MANAGING THIS WELL.

10:55AM 19 DO YOU SEE THAT?

10:55AM 20 A. YES.

10:55AM 21 Q. THEN IF YOU GO TO PAGE 8 -- I'M SORRY. MY PAGINATION IS A

10:55AM 22 LITTLE OFF, SO I THINK IT'S PAGE 7.

10:55AM 23 A. YES.

10:55AM 24 Q. YES. OKAY. THESE ARE SOME OF THE CHALLENGES AT THE

10:56AM 25 OPERATIONS LEVEL; RIGHT?

10:56AM 1 A. THAT'S CORRECT.

10:56AM 2 Q. SO LONG LINES WAS ONE OF THE PROBLEMS; RIGHT?

10:56AM 3 A. CORRECT.

10:56AM 4 Q. AND, YOU KNOW, THERE'S A CONCERN, RIGHT, THAT IF YOU HAVE

10:56AM 5 LINES THAT ARE TOO LONG, PEOPLE MIGHT JUST GIVE UP AND LEAVE,

10:56AM 6 NOT GET THEIR BLOOD DRAWN; RIGHT?

10:56AM 7 A. CORRECT.

10:56AM 8 THESE LONG LINES -- JUST TO AGAIN GIVE SOME CLARITY HERE,

10:56AM 9 ALL PATIENTS THAT CAME IN FOR EITHER THE THERANOS SERVICE OR

10:56AM 10 FOR THEIR PRESCRIPTIONS WERE IN THE SAME LINE, AND SO THAT WAS

10:56AM 11 CAUSING A LONGER LINE, OR A LONGER WAIT TO CHECK IN.

10:56AM 12 Q. RIGHT. AND THIS IS SOMETHING THAT WAS UNDER DISCUSSION IN

10:56AM 13 THESE PARTNERSHIP MEETINGS, BECAUSE IF YOU COULD REDUCE THE

10:56AM 14 LINE WITH THE MORE STREAMLINED CHECK IN PROCESS, YOU COULD

10:56AM 15 POTENTIALLY SERVE MORE PATIENTS; RIGHT?

10:56AM 16 A. AND CREATE A BETTER EXPERIENCE.

10:56AM 17 Q. RIGHT. OKAY.

10:56AM 18 AND THEN IT GOES ON TO SOME OF THE OTHER ISSUES THAT THE

10:56AM 19 TEAM IS ADDRESSING; RIGHT?

10:57AM 20 A. YES.

10:57AM 21 Q. OKAY. AND THEN IF YOU GO TO THE NEXT PAGE, YOU SEE THAT

10:57AM 22 THERE'S A -- WE'VE SEEN THIS TYPE OF CHART BEFORE. THIS IS THE

10:57AM 23 THERANOS EXPERIENCE SURVEY SUMMARY?

10:57AM 24 A. YES, SIR.

10:57AM 25 Q. AND IT HAS THE AVERAGE FOR THE PERIOD WE'RE TALKING ABOUT,

10:57AM 1 WHICH WAS DECEMBER 2014, AND THEN IT HAS THE AVERAGE STARS AND
10:57AM 2 THE CHANGE FROM THE PREVIOUS MONTH; RIGHT?
10:57AM 3 A. YES.
10:57AM 4 Q. AND ALL OF THEM, EXCEPT FOR THE NO CHANGE FOR SKILL OF
10:57AM 5 TECHNICIAN, ARE ALL A LITTLE BIT UP; RIGHT?
10:57AM 6 A. CORRECT.
10:57AM 7 Q. OKAY. INCLUDING THE SAMPLE COLLECTION PROCESS; RIGHT?
10:57AM 8 A. CORRECT.
10:57AM 9 Q. OKAY. AND THEN IF YOU GO JUST THROUGH THE NEXT PAGES,
10:57AM 10 THERE'S THOSE SAME TYPES OF PIE CHARTS THAT WE HAVE SEEN BEFORE
10:57AM 11 IN OTHER EXHIBITS; RIGHT? AND THESE ARE ALL CONTINUING TO LOOK
10:57AM 12 POSITIVE; RIGHT?
10:57AM 13 A. YES.
10:58AM 14 Q. OKAY. SO ONE OF THE THINGS IN THE AGENDA WAS THIS
10:58AM 15 CALIFORNIA UPDATE.
10:58AM 16 DO YOU REMEMBER THAT?
10:58AM 17 A. YES, SIR.
10:58AM 18 Q. AND IF YOU GO TO PAGE -- I THINK IT WAS PAGE 21,
10:58AM 19 MR. ALLEN. RIGHT.
10:58AM 20 THAT'S THE BEGINNING OF THE SECTION OF THE SLIDE DECK
10:58AM 21 ABOUT CALIFORNIA UPDATE.
10:58AM 22 DO YOU SEE THAT?
10:58AM 23 A. YES.
10:58AM 24 Q. AND THEN IF YOU GO TO THE NEXT PAGE, IT TALKS ABOUT
10:58AM 25 CONSTRUCTION OF CERTAIN STORES; RIGHT?

10:58AM 1 A. CORRECT.

10:58AM 2 Q. AND THOSE NUMBERS LIKE 625 AND 689, THE OTHERS WITH THE

10:58AM 3 NUMBER SIGN, THOSE ARE REFERRING TO SPECIFIC WALGREENS STORES;

10:58AM 4 RIGHT?

10:58AM 5 A. CORRECT. EACH WALGREENS STORE IS ASSIGNED A STORE NUMBER,

10:58AM 6 AND THAT'S WHAT THIS IS REFERRING TO.

10:58AM 7 Q. RIGHT. SO THEN IF YOU GO TO THE NEXT PAGE, THEN IT HAS A

10:59AM 8 SECTION ON VARIOUS STORES.

10:59AM 9 SO, FOR EXAMPLE, THE FIRST ONE IS STORE 689; RIGHT?

10:59AM 10 A. YES, THAT'S CORRECT.

10:59AM 11 Q. AND THEN IF YOU GO TO THE NEXT PAGE AFTER THAT, IT

10:59AM 12 ACTUALLY HAS A DRAWING, IT'S A LITTLE HARD TO MAKE OUT, BUT

10:59AM 13 THAT'S A DRAWING OF WHAT THIS STORE WOULD LOOK LIKE; RIGHT?

10:59AM 14 A. RIGHT. IT'S ACTUALLY A DRAWING OF THE PHARMACY AREA, AND

10:59AM 15 THE WAITING AREA, AND THE CONSULTATION ROOM OF THE STORE.

10:59AM 16 SO IT'S NOT THE FULL STORE. IT'S ONLY THE BACK PART OF

10:59AM 17 THE STORE WHERE THE PHARMACY IS.

10:59AM 18 Q. RIGHT. AND THAT HAPPENS TO BE STORE 689 IN MOUNTAIN VIEW,

10:59AM 19 CALIFORNIA; RIGHT?

10:59AM 20 A. YES.

10:59AM 21 Q. AND IF WE GO TO THE NEXT PAGE, WE'RE STILL ON THE

10:59AM 22 MOUNTAIN VIEW STORE. BUT AFTER THAT WE'RE TALKING ABOUT THE

10:59AM 23 MILBRAE, CALIFORNIA STORE 625.

10:59AM 24 GO TO THE NEXT ONE, MR. ALLEN.

10:59AM 25 DO YOU SEE THAT?

10:59AM 1 A. THAT'S CORRECT.

10:59AM 2 Q. AND THEN IF YOU GO TO THE NEXT STORE, THERE'S A

11:00AM 3 SAN CARLOS, CALIFORNIA STORE?

11:00AM 4 A. THAT'S RIGHT.

11:00AM 5 Q. AND A FREMONT, CALIFORNIA STORE?

11:00AM 6 A. CORRECT.

11:00AM 7 Q. AND SO THIS IS ACTUAL PLANNING TO OPEN THESE STORES GOING

11:00AM 8 FORWARD; RIGHT?

11:00AM 9 A. CORRECT.

11:00AM 10 SO, AGAIN, AS WE START TO PLAN FOR STORES, WE HAVE TO

11:00AM 11 REDESIGN, WE HAVE TO START CONSTRUCTION, JUST LIKE A HOME OR

11:00AM 12 ANYTHING ELSE, AND THESE ARE THE DRAWINGS OF WHAT THIS SPACE

11:00AM 13 WOULD LOOK LIKE.

11:00AM 14 Q. OKAY. IF YOU GO TO PAGE 32, MR. ALLEN, THERE'S A SECTION

11:00AM 15 ON DIAGNOSTIC TESTING - STI INITIATIVE UPDATE.

11:00AM 16 SO THAT WAS ANOTHER AGENDA ITEM; RIGHT?

11:00AM 17 A. CORRECT.

11:00AM 18 Q. AND THEN AFTER THAT, THERE ARE SOME MORE DRAWINGS, WHICH

11:00AM 19 ARE HARD TO READ, INVOLVING THAT TOPIC; RIGHT?

11:00AM 20 A. YEAH, THESE DRAWINGS ARE OF THE ENTIRE STORE IN THIS CASE.

11:01AM 21 Q. OKAY. THANK YOU. YOU CAN PUT THAT EXHIBIT ASIDE.

11:01AM 22 THE NEXT EXHIBIT IS 20238.

11:01AM 23 AND YOU SEE 20238, MR. JHAVERI?

11:01AM 24 A. YES, SIR.

11:01AM 25 Q. AND THIS IS ANOTHER EMAIL FROM PATTY HAWORTH?

11:01AM 1 A. IT IS.

11:01AM 2 Q. TO A GROUP OF PEOPLE AT THERANOS AND WALGREENS WHO WERE

11:01AM 3 WORKING ON THE PROGRAM BETWEEN THE TWO COMPANIES; RIGHT?

11:01AM 4 A. THAT'S CORRECT.

11:01AM 5 Q. AND THIS ONE IS FROM JANUARY 21ST, 2015; RIGHT?

11:01AM 6 A. YES.

11:01AM 7 Q. AND SO THIS TIME SHE'S ACTUALLY SENDING THE MINUTES FROM

11:01AM 8 THE MEETING THAT HAPPENED ON JANUARY 14TH; RIGHT?

11:02AM 9 A. YEAH. CORRECT. THE USUAL CADENCE WAS WE WOULD HAVE THE

11:02AM 10 MEETING, SHE WOULD TAKE THE NOTES AND MAKE SURE THAT SHE'S

11:02AM 11 CAPTURED ALL OF THE DECISIONS, AND THEN THOSE AGAIN, IN THIS

11:02AM 12 PARTICULAR CASE, ARE BEING REPORTED OUT.

11:02AM 13 Q. OKAY.

11:02AM 14 YOUR HONOR, WE OFFER 20238.

11:02AM 15 MR. SCHENK: NO OBJECTION.

11:02AM 16 THE COURT: IT'S ADMITTED. IT MAY BE PUBLISHED.

11:02AM 17 (DEFENDANT'S EXHIBIT 20238 WAS RECEIVED IN EVIDENCE.)

11:02AM 18 BY MR. COOPERSMITH:

11:02AM 19 Q. ON THE FIRST PAGE, MR. JHAVERI, YOU SEE AFTER THE EMAIL

11:02AM 20 INFORMATION WE'VE JUST DISCUSSED, THERE'S A SECTION CALLED

11:02AM 21 ACTION ITEMS.

11:02AM 22 DO YOU SEE THAT?

11:02AM 23 A. YES, I DO.

11:02AM 24 Q. AND NUMBER 6 IS "ACTIVATE NEW BUSINESS MODEL."

11:02AM 25 RIGHT?

11:02AM 1 A. CORRECT.

11:02AM 2 Q. AND THAT REFERS TO THIS TOPIC THAT CAME OUT OF THAT

11:02AM 3 MEETING WITH THE HIGH LEVEL WALGREENS PEOPLE TO AMEND OR REVISE

11:02AM 4 THE RELATIONSHIP GOING FORWARD; RIGHT?

11:02AM 5 A. CORRECT.

11:02AM 6 Q. OKAY. AND NUMBER 8 IS "DETERMINE PHASED ROLLOUT FOR NEW

11:03AM 7 BUSINESS MODEL."

11:03AM 8 CORRECT?

11:03AM 9 A. THAT'S CORRECT.

11:03AM 10 Q. LET'S GO TO THE MINUTES THEMSELVES, SO STARTING ON PAGE 4

11:03AM 11 OF THE EXHIBIT.

11:03AM 12 AND THIS FIRST PAGE HAS THE AGENDA; RIGHT?

11:03AM 13 A. YES.

11:03AM 14 Q. AND THEN IF YOU GO TO THE NEXT PAGE OF THE MEETING

11:03AM 15 MINUTES, YOU SEE AT THE BOTTOM IT SAYS, "SIGNED ACO CONTRACT

11:03AM 16 WITH COMMONWEALTH THIS MONTH."

11:03AM 17 DO YOU SEE THAT?

11:03AM 18 A. YES.

11:03AM 19 Q. AND THAT'S A HEALTH CARE INSURANCE COMPANY?

11:03AM 20 A. CORRECT.

11:03AM 21 Q. AND THEN IF YOU GO TO THE -- THERE'S A BULLET THERE THAT

11:03AM 22 SAYS, "180-200 PHYSICIANS USING THERANOS EXCLUSIVELY."

11:03AM 23 RIGHT?

11:03AM 24 A. CORRECT.

11:03AM 25 Q. AND THAT'S ONE OF THE THINGS DISCUSSED AT THE MEETING?

11:03AM 1 A. YES.

11:03AM 2 Q. OKAY. IF YOU GO TO THE NEXT PAGE, PAGE 6, IT SAYS

11:04AM 3 HIGHLIGHTS, RIGHT?

11:04AM 4 AND THEN THERE'S A "GUEST VOLUME INCREASING AND SOME

11:04AM 5 STORES ARE MANAGING THIS WELL."

11:04AM 6 RIGHT?

11:04AM 7 A. YES.

11:04AM 8 Q. AND THEN "CURRENT PARTNERING CHALLENGES."

11:04AM 9 RIGHT?

11:04AM 10 A. CORRECT.

11:04AM 11 Q. OKAY. LET'S GO TO PAGE 8.

11:04AM 12 OKAY. SO AT THE TOP THERE'S A PIE CHART, RIGHT, ABOUT

11:04AM 13 LIKELIHOOD OF RETURNING TO A THERANOS WELLNESS CENTER?

11:04AM 14 A. YES.

11:04AM 15 Q. AND THE PIE CHART STILL SHOWS THAT'S TRENDING REALLY WELL;

11:04AM 16 RIGHT?

11:04AM 17 A. CORRECT.

11:04AM 18 Q. AND THEN IF YOU GO DOWN, THERE'S THIS OPS MODEL DISCUSSION

11:04AM 19 HEADING.

11:04AM 20 AND THEN THE FIRST BULLET SAYS, "ALL SERVICES, INCLUDING

11:05AM 21 FINGERSTICK AND VENIPUNCTURE TO BE PERFORMED BY THERANOS."

11:05AM 22 DO YOU SEE THAT?

11:05AM 23 A. YES.

11:05AM 24 Q. AND THAT'S PART OF THE NEW BUSINESS MODEL THAT WAS BEING

11:05AM 25 DISCUSSED WAS THAT THERANOS WOULD TAKE OVER THAT COLLECTION;

11:05AM 1 RIGHT?

11:05AM 2 A. CORRECT.

11:05AM 3 Q. AND THAT WOULD REDUCE THE COST TO WALGREENS; RIGHT?

11:05AM 4 A. JUST ON TRAINING. THE EMPLOYEE BASE WOULD STILL BE THE

11:05AM 5 SAME BECAUSE IT WAS THE TECHNICIANS THAT WERE ALREADY ON STAFF.

11:05AM 6 Q. RIGHT. BUT IT SAYS, "ALL SERVICES, INCLUDING FINGERSTICK

11:05AM 7 AND VENIPUNCTURE TO BE PERFORMED BY THERANOS."

11:05AM 8 RIGHT?

11:05AM 9 A. CORRECT.

11:05AM 10 Q. AND THEN IT GOES ON THE NEXT PAGE, PAGE 9, THERE'S A THIRD

11:05AM 11 BULLET POINT DOWN THAT SAYS, "NIMESH JHAVERI WOULD LIKE TO

11:05AM 12 FLUSH OUT MODELS IN THE ARIZONA MARKET DURING CONTRACT

11:05AM 13 RENEgotiation. IT IS IMPORTANT TO TRULY UNDERSTAND WHAT THE

11:05AM 14 PARTNERSHIP WILL LOOK LIKE IN THE NEXT MARKET."

11:05AM 15 DO YOU SEE THAT?

11:05AM 16 A. YES.

11:05AM 17 Q. AND THAT'S SOMETHING THAT YOU DISCUSSED AT THE MEETING;

11:05AM 18 RIGHT?

11:05AM 19 A. YES.

11:05AM 20 Q. AND THEN IT SAYS, "NIMESH JHAVERI STATED THAT THIS NEW

11:06AM 21 MODEL WILL ALLOW US TO MOVE FASTER."

11:06AM 22 DO YOU SEE THAT?

11:06AM 23 A. YES.

11:06AM 24 Q. AND THAT'S SOMETHING THAT YOU DISCUSSED AT THE MEETING?

11:06AM 25 A. YES.

11:06AM 1 Q. AND THEN BELOW THAT IT SAYS THAT "SUNNY BALWANI COMMENTED
11:06AM 2 THAT THERANOS'S BIGGEST LEARNING WAS TO PUT INFRASTRUCTURE IN
11:06AM 3 PLACE, INCLUDING SALES TEAM, LABORATORY, ET CETERA, BEFORE
11:06AM 4 TURNING ON THE NEXT MARKET."
11:06AM 5 DO YOU SEE THAT?
11:06AM 6 A. YES.
11:06AM 7 Q. AND SOMETHING THAT WAS DISCUSSED AT THE MEETING?
11:06AM 8 A. YES, IT WAS.
11:06AM 9 Q. AND THEN IF YOU GO DOWN THERE'S A BULLET POINT THAT READS,
11:06AM 10 "RESPECTIVE TEAMS ARE ALIGNED, STORES WILL BE TRANSITIONED TO
11:06AM 11 THE NEW MODEL ONCE 100 PERCENT OF THERANOS PHLEBOTOMISTS CAN
11:06AM 12 CONDUCT THE PERFORM PART OF THE WORKFLOW AND 100 PERCENT OF
11:06AM 13 WALGREENS RESOURCES CAN PERFORM CHECK IN DURING ALL THERANOS
11:06AM 14 HOURS OF OPERATION."
11:06AM 15 RIGHT?
11:06AM 16 A. YES.
11:06AM 17 Q. AND WALGREENS PERSONNEL WERE GOING TO DO THE CHECK IN;
11:07AM 18 RIGHT?
11:07AM 19 A. THAT'S RIGHT.
11:07AM 20 Q. AND THEN THE THERANOS PHLEBOTOMIST WOULD CONDUCT THE --
11:07AM 21 PERFORM PART OF THE WORKFLOW? THAT'S WHAT IT SAYS; RIGHT?
11:07AM 22 A. YEAH, THEY WOULD PERFORM THE BLOOD DRAW.
11:07AM 23 Q. RIGHT.
11:07AM 24 A. AND WALGREENS WOULD PERFORM THE CHECK IN OF ALL PATIENTS
11:07AM 25 COMING IN.

11:07AM 1 Q. THIS IS PART OF THE NEW BUSINESS MODEL GOING FORWARD?

11:07AM 2 A. THAT'S RIGHT.

11:07AM 3 Q. AND THEN IT HAS BELOW THAT, "NIMESH JHAVERI GAVE THE TEAM

11:07AM 4 A GOAL TO ACTIVATE THE NEW BUSINESS MODEL BY FEBRUARY 1ST."

11:07AM 5 RIGHT?

11:07AM 6 A. THAT'S CORRECT.

11:07AM 7 Q. OKAY. BELOW THAT IT TALKS ABOUT "TRACY MASSON," DO YOU

11:07AM 8 SEE THAT, "TO DETERMINE PHASED ROLLOUT BY EARLY NEXT WEEK."

11:07AM 9 RIGHT?

11:07AM 10 A. YES.

11:07AM 11 Q. THAT WAS DISCUSSED AT THE MEETING; CORRECT?

11:07AM 12 A. CORRECT.

11:07AM 13 Q. OKAY. AND THEN THERE'S A LINE THAT SAYS, "SUNNY BALWANI

11:07AM 14 GAVE THE TEAM 30-60 DAYS TO CUT OVER TO THE NEW BUSINESS

11:08AM 15 MODEL."

11:08AM 16 RIGHT?

11:08AM 17 A. YES.

11:08AM 18 Q. IF YOU GO TO PAGE 10, THE NEXT PAGE, THERE'S A BULLET

11:08AM 19 POINT THERE RIGHT BEFORE THE HEADING THAT SAYS, "NIMESH JHAVERI

11:08AM 20 STATED THAT THE TEAM HAD LEARNED A LOT IN THE PAST 4 YEARS. WE

11:08AM 21 ARE ABSOLUTELY ALIGNED ON THE APPROACH TO THE NEXT PHASE OF THE

11:08AM 22 AGREEMENT."

11:08AM 23 DO YOU SEE THAT?

11:08AM 24 A. YES.

11:08AM 25 Q. "NEED TO AGREE ON SIGNAGE, ET CETERA, IN ADVANCE. THERE

11:08AM 1 IS A MEETING SCHEDULED NEXT MONDAY WITH WORK STREAM EXECUTIVES
11:08AM 2 TO DRIVE OPERATING MODEL CHANGES. THIS MESSAGE NEEDS TO COME
11:08AM 3 FROM THE TOP DOWN," AND THEN IT GOES ON.
11:08AM 4 DO YOU SEE THAT?
11:08AM 5 A. YES.
11:08AM 6 Q. AND IT ACTUALLY TALKS ABOUT SOMEONE NAMED "ABHI DHAR IS
11:08AM 7 THE HEAD OF WALGREENS I.T. INFRASTRUCTURE."
11:08AM 8 RIGHT?
11:08AM 9 A. YES.
11:08AM 10 Q. THAT PIECE WOULD ALSO BE NECESSARY AS THE PARTNERSHIP
11:08AM 11 CONTINUED; RIGHT?
11:08AM 12 A. CORRECT.
11:08AM 13 Q. OKAY. DURING THIS TIME, THERE HAD BEEN DISCUSSION OF A
11:09AM 14 NEW BUSINESS MODEL, BUT A CONTRACT HADN'T BEEN SIGNED; RIGHT?
11:09AM 15 A. PART OF THIS IS WE WERE STARTING TO WORK ON A NEW
11:09AM 16 CONTRACT, BUT AT THAT MEETING WE AGREED WE WOULD START TO
11:09AM 17 TRANSITION OVER TO THIS NEW MODEL CONCURRENTLY WITH A NEW
11:09AM 18 CONTRACT.
11:09AM 19 Q. OKAY. BUT YOU WANTED TO ACTUALLY HAVE THE CONTRACT IN
11:09AM 20 PLACE BEFORE THE ACTUAL BUILDING OF STORES AND ACTIVITY LIKE
11:09AM 21 THAT WOULD CONTINUE; RIGHT?
11:09AM 22 A. OF COURSE.
11:09AM 23 Q. AND THAT'S REFLECTED, FOR EXAMPLE, ON PAGE 12 IN THE
11:09AM 24 BULLET THAT WE CAN HIGHLIGHT RIGHT BEFORE THE SECOND HEADING.
11:09AM 25 DO YOU SEE, "PER CASEY KOZLOWSKI, THIS IS ON HOLD UNTIL

11:09AM 1 CONTRACT IS RENEgotiated."

11:09AM 2 DO YOU SEE THAT?

11:10AM 3 A. YES.

11:10AM 4 Q. AND THAT'S THAT CONCEPT; RIGHT?

11:10AM 5 A. WELL, IN THIS PARTICULAR BULLET POINT, WHAT SHE'S

11:10AM 6 REFERRING TO IS THE STI PLANS IN TUCSON. THAT'S WHAT THIS IS

11:10AM 7 IN REFERENCE TO.

11:10AM 8 REMEMBER, AS WE DISCUSSED, THE WORK WAS ALREADY STARTING

11:10AM 9 TO TRANSITION TO THE NEW MODEL, AND AS I STATED, THAT WE WOULD

11:10AM 10 START TO TRANSITION BY FEBRUARY 1ST, WHICH WAS ABOUT TWO WEEKS

11:10AM 11 FROM THERE.

11:10AM 12 Q. OKAY. THANK YOU.

11:10AM 13 YOU CAN PUT THAT EXHIBIT ASIDE.

11:10AM 14 THE NEXT ONE IS 2394.

11:10AM 15 DO YOU HAVE THAT, MR. JHAVERI?

11:10AM 16 A. I DO, SIR.

11:10AM 17 Q. THIS IS ANOTHER PARTNERSHIP MEETING SLIDE DECK, THIS TIME

11:11AM 18 FROM FEBRUARY 17TH, 2015?

11:11AM 19 A. YES.

11:11AM 20 Q. AGAIN, MS. HAWORTH?

11:11AM 21 A. CORRECT.

11:11AM 22 Q. OKAY.

11:11AM 23 YOUR HONOR, WE OFFER 2394.

11:11AM 24 MR. SCHENK: NO OBJECTION.

11:11AM 25 THE COURT: IT'S ADMITTED. IT MAY BE PUBLISHED.

11:11AM 1 (DEFENDANT'S EXHIBIT 2394 WAS RECEIVED IN EVIDENCE.)

11:11AM 2 BY MR. COOPERSMITH:

11:11AM 3 Q. OKAY. SO THIS IS A MEETING ABOUT A MONTH AFTER THE LAST

11:11AM 4 ONE WE LOOKED AT; RIGHT?

11:11AM 5 A. CORRECT.

11:11AM 6 Q. AND IF YOU GO TO THE SECOND PAGE, IT JUST HAS THE TITLE

11:11AM 7 AND THE DATE.

11:11AM 8 DO YOU SEE THAT?

11:11AM 9 A. YES.

11:11AM 10 Q. AND THEN IF YOU GO TO PAGE 4, IT HAS A CURRENT STATUS

11:11AM 11 SLIDE; RIGHT?

11:11AM 12 A. YES, IT DOES.

11:11AM 13 Q. PATIENT VISITS CONTINUE TO GO UP; RIGHT?

11:11AM 14 A. YES, SIR.

11:11AM 15 Q. AND THEN THERE'S THE SAME SORT OF CATEGORIES ON PAGE 6

11:12AM 16 THAT HAS THE CURRENT PARTNERING CHALLENGES.

11:12AM 17 DO YOU SEE THAT?

11:12AM 18 A. YES.

11:12AM 19 Q. AND IT LISTS WHAT THOSE ARE AT THE TIME; RIGHT?

11:12AM 20 A. YES, SIR.

11:12AM 21 Q. AND THEN THE NEXT PAGE, THE EXPERIENCE SUMMARY CHART THAT

11:12AM 22 WE HAVE SEEN BEFORE; RIGHT?

11:12AM 23 A. YES.

11:12AM 24 Q. AND THIS TIME FOR JANUARY 15TH; RIGHT?

11:12AM 25 A. CORRECT.

11:12AM 1 Q. AND THEN IF YOU GO TO PAGE 8 FIRST, MORE OF THOSE BAR
11:12AM 2 GRAPHS; RIGHT?
11:12AM 3 A. YES.
11:12AM 4 Q. AND THEN ON PAGE 9, THE LAST TWO BAR GRAPHS; RIGHT?
11:12AM 5 A. YES.
11:12AM 6 Q. AND ONE OF THEM IS A SAMPLE COLLECTION PROCESS; RIGHT?
11:12AM 7 A. YES.
11:12AM 8 Q. AND THAT WAS STILL OVERWHELMINGLY PEOPLE PUTTING DOWN 5'S;
11:12AM 9 RIGHT?
11:12AM 10 A. YES.
11:12AM 11 Q. OKAY. YOU CAN PUT THAT ASIDE.
11:13AM 12 OKAY. LET'S GO TO -- WE WERE TALKING ABOUT THE CONTRACT
11:13AM 13 ISSUE, SO TO TALK MORE ABOUT THAT TOPIC, LET'S GO TO 20242.
11:13AM 14 DO YOU SEE THIS IS AN EMAIL STRING? AT THE TOP IT'S AN
11:13AM 15 EMAIL FROM YOU TO MR. BALWANI, AND BELOW THAT IT'S AN EMAIL
11:13AM 16 FROM MS. KOZLOWSKI.
11:13AM 17 DO YOU SEE THAT?
11:13AM 18 A. YES.
11:13AM 19 Q. AND THIS RELATES TO THE ONGOING CONTRACT DISCUSSION
11:13AM 20 BETWEEN THERANOS AND WALGREENS; CORRECT?
11:13AM 21 A. THAT'S CORRECT.
11:13AM 22 Q. AND THIS IS DATED IN MARCH HAD OF 2015?
11:14AM 23 A. YES.
11:14AM 24 MR. COOPERSMITH: YOUR HONOR, WE OFFER 20242.
11:14AM 25 MR. SCHENK: NO OBJECTION.

11:14AM 1 THE COURT: IT'S ADMITTED. IT MAY BE PUBLISHED.

11:14AM 2 (DEFENDANT'S EXHIBIT 20242 WAS RECEIVED IN EVIDENCE.)

11:14AM 3 BY MR. COOPERSMITH:

11:14AM 4 Q. OKAY. THE EMAIL, STARTING WITH THE BOTTOM ONE, THIS IS

11:14AM 5 FROM MS. KOZLOWSKI TO A GROUP OF PEOPLE, INCLUDING YOURSELF.

11:14AM 6 IT SAYS, "ALL,

11:14AM 7 "THANKS FOR YOUR TIME YESTERDAY. ALTHOUGH THERE'S STILL A

11:14AM 8 LOT TO DO, I THINK WE MADE SOME GREAT PROGRESS. HERE'S WHAT I

11:14AM 9 HAVE AS DELIVERABLES FOR OUR NEXT MEETING ON 3/20. LET ME KNOW

11:14AM 10 IF I'VE MISSED ANYTHING."

11:14AM 11 RIGHT?

11:14AM 12 A. YES.

11:14AM 13 Q. AND SO THERE HAD BEEN A MEETING ON FEBRUARY 17TH?

11:14AM 14 A. YES.

11:14AM 15 Q. AND THEN THERE WAS GOING TO BE ANOTHER MEETING ON

11:14AM 16 MARCH 20TH; RIGHT?

11:14AM 17 A. YES.

11:14AM 18 Q. RIGHT. SO WE SAW SOME EXAMPLES OF MEETINGS BEING SPACED

11:14AM 19 SEVERAL MONTHS APART EARLIER; RIGHT?

11:14AM 20 A. CORRECT.

11:14AM 21 Q. AND NOW WE'RE SEATING IN THIS EARLY 2015 TIMEFRAME MONTHLY

11:15AM 22 MEETINGS, AT LEAST IN JANUARY, FEBRUARY, AND MARCH; IS THAT

11:15AM 23 RIGHT?

11:15AM 24 A. CORRECT.

11:15AM 25 Q. OKAY. IF YOU GO TO THE SAME EMAIL WE WERE JUST LOOKING

11:15AM 1 AT, IT SAYS, "PUT TOGETHER 18-MONTH EXECUTION PLAN AND 3-YEAR
11:15AM 2 LONG-RANGE PLAN."
11:15AM 3 DO YOU SEE THAT?
11:15AM 4 A. YES, I DO.
11:15AM 5 Q. AND THAT WAS GOING TO BE ONE OF THE ITEMS FOR DISCUSSION;
11:15AM 6 RIGHT?
11:15AM 7 A. CORRECT.
11:15AM 8 Q. AND THEN NOT TO READ EVERY ONE, BUT IF YOU GO TO THE LAST
11:15AM 9 BULLET, IT SAYS, "DETERMINE STORE LIST FOR SOCAL, ARIZONA (20
11:15AM 10 MORE) AND CENTRAL PENNSYLVANIA (ALLENTOWN)" -- AND THEN,
11:15AM 11 "CASEY/DAVE MILLER (SUNNY TO SEND LIST OF THEIR REQUEST.)"
11:15AM 12 DO YOU SEE THAT?
11:15AM 13 A. I DO.
11:15AM 14 Q. AND THEN THE EMAIL ON TOP, YOUR RESPONSE WAS -- WELL, YOU
11:15AM 15 SENT THIS ON TO SUNNY; RIGHT?
11:15AM 16 A. I DID.
11:15AM 17 Q. YOU SAY, "HELLO SUNNY -
11:15AM 18 "THANK YOU AGAIN FOR YOUR TIME AND SCOTT'S TIME.
11:15AM 19 APPRECIATE THE CANDOR AND DISCUSSION. I DO BELIEVE WE MADE
11:16AM 20 GOOD PROGRESS YESTERDAY. WE HAVE A FEW THINGS TO TIE UP --
11:16AM 21 I'VE ASKED THAT WE HAVE OUR 'ALMOST' READY NEXT VERSION BY
11:16AM 22 EARLY NEXT WEEK IN ANTICIPATION OF NEXT FRIDAY'S MEETING.
11:16AM 23 LOOKING FORWARD TO COMPLETING THE AGREEMENT."
11:16AM 24 DO YOU SEE THAT?
11:16AM 25 A. YES.

11:16AM 1 Q. AND SO YOU'RE TRYING TO DRIVE THIS CONTRACT PROCESS AND
11:16AM 2 FINALIZATION OF IT FORWARD; RIGHT?
11:16AM 3 A. YES.
11:16AM 4 Q. LET'S LOOK AT EXHIBIT 2449 NEXT ON THE SAME TOPIC OF THE
11:16AM 5 CONTRACT.
11:17AM 6 (PAUSE IN PROCEEDINGS.)
11:17AM 7 THE WITNESS: I HAVE IT.
11:17AM 8 BY MR. COOPERSMITH:
11:17AM 9 Q. OKAY. THANK YOU.
11:17AM 10 THIS EXHIBIT 2449 IS AN EMAIL, AND ON THE FIRST PAGE IS AN
11:17AM 11 EMAIL FROM JONATHAN SPITZER OF WALGREENS TO YOU AND THEN OTHERS
11:17AM 12 WITHIN WALGREENS; IS THAT CORRECT?
11:17AM 13 A. YES.
11:17AM 14 Q. OKAY. AND IT'S IN CONNECTION WITH THE THERANOS
11:17AM 15 PARTNERSHIP; CORRECT?
11:17AM 16 A. YES, IT WAS.
11:17AM 17 MR. COOPERSMITH: YOUR HONOR, WE OFFER 2449.
11:17AM 18 MR. SCHENK: NO OBJECTION.
11:17AM 19 THE COURT: IT'S ADMITTED. IT MAY BE PUBLISHED.
11:18AM 20 (GOVERNMENT'S EXHIBIT 2449 WAS RECEIVED IN EVIDENCE.)
11:18AM 21 BY MR. COOPERSMITH:
11:18AM 22 Q. OKAY. SO, MR. JHAVERI, THIS IS FROM JONATHAN SPITZER;
11:18AM 23 RIGHT?
11:18AM 24 A. YES.
11:18AM 25 Q. IT'S ON MARCH 30TH, 2015; RIGHT?

11:18AM 1 A. YES.

11:18AM 2 Q. AND DOES JONATHAN SPITZER GO BY JAY SPITZER SOMETIMES?

11:18AM 3 A. YES.

11:18AM 4 Q. AND CAN YOU TELL US WHO THAT IS?

11:18AM 5 A. JAY SPITZER WAS MY FINANCE OFFICER AND HE SUPPORTED ALL OF

11:18AM 6 THE PROJECTS AND PROGRAMS THAT ROLLED UP INTO MY TEAM.

11:18AM 7 Q. OKAY. IF YOU GO UP TO THE NEXT PAGE, PAGE 2, YOU CAN SEE

11:18AM 8 THE SIGNATURE BLOCK THERE; RIGHT?

11:18AM 9 A. YES.

11:18AM 10 Q. AND SO THAT'S ACCURATE; RIGHT?

11:18AM 11 A. THAT IS ACCURATE.

11:18AM 12 Q. ALL RIGHT. SO LET'S GO BACK TO THE FIRST PAGE, AND

11:18AM 13 MR. SPITZER WRITES, "TEAM LET ME KNOW ANY REVISIONS YOU WOULD

11:18AM 14 LIKE BEFORE SENDING OVER TO ALAN TOMORROW MORNING. THE BELOW

11:18AM 15 WRITE UP IS DETAILED, BUT I WANT TO MAKE SURE ALAN HAS ALL

11:19AM 16 INFORMATION UP-FRONT."

11:19AM 17 DO YOU SEE THAT?

11:19AM 18 A. I DO.

11:19AM 19 Q. AND WHO IS ALAN?

11:19AM 20 A. ALAN NIELSEN, WHO HE WAS REFERRING TO, WAS THE CHIEF

11:19AM 21 FINANCE OFFICER FOR WALGREENS COMPANY, THE U.S. BASED WALGREENS

11:19AM 22 COMPANY.

11:19AM 23 Q. OKAY. LET'S GO TO THE SUBSTANCE OF IT.

11:19AM 24 MR. SPITZER WROTE, "PLEASE FIND ATTACHED A QUICK SNAPSHOT

11:19AM 25 OF THE FINANCIAL AND OPERATIONAL PERFORMANCE OF THE THERANOS

11:19AM 1 PILOT."

11:19AM 2 DO YOU SEE THAT?

11:19AM 3 A. YES.

11:19AM 4 Q. AND THEN IT GOES ON, "NOTE THAT THE FINANCIALS ATTACHED

11:19AM 5 REFLECT THE CURRENT CONTRACT IN PLACE IN WHICH WALGREENS IS

11:19AM 6 REIMBURSED \$10 PER PATIENT AS WELL AS RESPONSIBLE FOR BUILD OUT

11:19AM 7 COST AND PROVIDING LABOR FOR THE SERVICE START TO FINISH."

11:19AM 8 DO YOU SEE THAT?

11:19AM 9 A. YES.

11:19AM 10 Q. AND SO HE'S DESCRIBING THE EXISTING CONTRACT; RIGHT?

11:19AM 11 A. THAT'S CORRECT.

11:19AM 12 Q. OKAY. AND THEN IT SAYS, "STARTING IN FEBRUARY THERANOS

11:19AM 13 HIRED AND STAFFED 40/41 LOCATIONS WITH THEIR PHLEBOTOMISTS AND

11:19AM 14 WALGREENS LABOR HAS BEEN REMOVED FROM THE STORES."

11:19AM 15 DO YOU SEE THAT?

11:19AM 16 A. YES.

11:19AM 17 Q. AND SO THAT'S DESCRIBING WHAT WAS ACTUALLY GOING ON IN THE

11:19AM 18 PARTNERSHIP AT THAT TIME; RIGHT?

11:20AM 19 A. YEAH.

11:20AM 20 JUST ONE CLARIFICATION. I JUST WANT TO MAKE SURE THAT IT

11:20AM 21 IS CLEAR.

11:20AM 22 WHEN JAY REFERS TO WALGREENS LABOR BEING REMOVED FROM THE

11:20AM 23 STORES, THEY WEREN'T REMOVED FROM THE STORES. THEY WERE

11:20AM 24 REMOVED FROM THE THERANOS SERVICES.

11:20AM 25 Q. RIGHT. WELL, WALGREENS STILL HAS TO MAN ITS OWN STORES;

11:20AM 1 RIGHT?

11:20AM 2 A. CORRECT.

11:20AM 3 Q. SOMEONE HAS TO STEER THE SHIP.

11:20AM 4 A. THE TEAM MEMBERS ARE STILL IN THE STORES, BUT THEY ARE NO

11:20AM 5 LONGER RESPONSIBLE FOR THE THERANOS SERVICES.

11:20AM 6 Q. THE BLOOD COLLECTION SERVICES?

11:20AM 7 A. CORRECT.

11:20AM 8 Q. RIGHT. SO WALGREENS -- I'M SORRY, THERANOS IS GOING TO

11:20AM 9 PROVIDE THOSE IN THE NEW MODEL.

11:20AM 10 A. THAT'S RIGHT.

11:20AM 11 Q. AND THEN IT SAYS, GOING ON, MR. SPITZER WROTE, "WE ARE

11:20AM 12 STILL PERFORMING CHECK IN FOR EACH OF THE THERANOS DIAGNOSTIC

11:20AM 13 PATIENTS WHICH TAKES ON AVERAGE 6 TO 7 MINUTES.

11:20AM 14 DO YOU SEE THAT?

11:20AM 15 A. YES.

11:20AM 16 Q. "I HAVE NOT FORESTED" -- MAYBE THAT'S FORECASTED -- "THE

11:21AM 17 CHANGE IN LABOR AT THIS TIME, BUT WE SHOULD EXPECT THE PROJECT

11:21AM 18 OPERATIONAL EXPENSES TO GO FROM ABOUT \$100,000 A MONTH TO ABOUT

11:21AM 19 20 TO \$40,000 PER MONTH."

11:21AM 20 RIGHT?

11:21AM 21 A. CORRECT.

11:21AM 22 Q. THAT'S BECAUSE WALGREENS IS BASICALLY GOING TO OFF-LOAD

11:21AM 23 SOME COSTS, SO IT'S GOING TO HAVE LESS COSTS FOR THESE

11:21AM 24 EMPLOYEES; RIGHT?

11:21AM 25 A. THAT'S CORRECT.

11:21AM 1 Q. AND THEN IT SAYS, "THE NEW CONTRACT RENEGOTIATIONS ARE
11:21AM 2 TAKING PLACE AND I HAVE PROVIDED AN EXECUTIVE SUMMARY BELOW."
11:21AM 3 DO YOU SEE THAT?
11:21AM 4 A. YES.
11:21AM 5 Q. OKAY. IT GOES ON. IN THE NEXT PARAGRAPH, MR. SPITZER
11:21AM 6 WRITES, "PATIENTS PER DAY ACTUALS VERSUS EXPECTED RAMP IS
11:21AM 7 TRENDING SLIGHTLY BELOW BUDGET THE LAST COUPLE OF MONTHS.
11:21AM 8 FEBRUARY WAS AT 6.4 VERSUS 6.6 PATIENTS PER DAY AND YEAR TO
11:21AM 9 DATE AVERAGE IS 4.9 VERSUS 4.9."
11:21AM 10 DO YOU SEE THAT?
11:21AM 11 A. YES.
11:21AM 12 Q. AND THEN HE SAYS, "THE BUSINESS TEAM BELIEVES THIS IS DUE
11:21AM 13 TO THE HOLIDAY SYSTEM NATIONAL IMPACT IS TO THE DIAGNOSTIC
11:22AM 14 TESTING INDUSTRY"?
11:22AM 15 A. YES.
11:22AM 16 Q. "WE SHOULD SEE THE PATIENTS PER DAY TREND UP AS THERANOS
11:22AM 17 JUST SIGNED A LAB TESTING DEAL WITH A MAJOR HEALTH SYSTEM IN
11:22AM 18 ARIZONA."
11:22AM 19 DO YOU SEE THAT?
11:22AM 20 A. YES.
11:22AM 21 Q. AND THEN IT SAYS, "TOTAL PATIENTS YEAR TO DATE FEBRUARY"
11:22AM 22 AND THEN IT HAS THE NUMBERS FOR THAT.
11:22AM 23 DO YOU SEE THAT?
11:22AM 24 A. YES.
11:22AM 25 Q. AND THEN IT HAS SOME REVENUE NUMBERS AFTER THAT; CORRECT?

11:22AM 1 A. YES.

11:22AM 2 Q. OKAY. AND THEN IN THE NEXT -- OR THE PARAGRAPH RIGHT

11:22AM 3 AFTER THAT, IT TALKS ABOUT WHAT THE NEW MODEL MIGHT LOOK LIKE

11:22AM 4 FROM A FINANCIAL PERSPECTIVE FOR WALGREENS; RIGHT?

11:22AM 5 A. CORRECT.

11:22AM 6 Q. OKAY. AND MR. SPITZER'S JOB WAS TO SORT OF THINK ABOUT

11:22AM 7 HOW TO SORT OF PLAN THAT OUT GOING FORWARD; RIGHT?

11:22AM 8 A. YES, MR. SPITZER'S JOB WAS TO PROVIDE THE FINANCIAL IMPACT

11:23AM 9 FOR ANY TYPE OF PROJECT, IN THIS CASE THE THERANOS PARTNERSHIP.

11:23AM 10 Q. RIGHT. AND THEN IN THAT LAST PARAGRAPH, HE SAYS "WHAT I

11:23AM 11 DO FEEL IS HELPFUL IS SOME CONTEXT AROUND FUTURE THERANOS,

11:23AM 12 WALGREENS BOOTS ALLIANCE RELATIONSHIP."

11:23AM 13 DO YOU SEE THAT?

11:23AM 14 A. YES.

11:23AM 15 Q. "WITH THERANOS TAKING ON BUILD OUT CAPITAL COSTS AND

11:23AM 16 STAFFING PHLEBOTOMIST WITH WALGREENS BEING LIABLE FOR CHECK IN

11:23AM 17 LABOR OUR GOAL WOULD BE TO RECEIVE 3 TIMES RENT AND MINIMUM

11:23AM 18 ABOUT \$8 PER PATIENT WHICH WOULD TRANSLATE TO AN EBIT OF TO

11:23AM 19 ABOUT 125 MILLION A YEAR."

11:23AM 20 DO YOU SEE THAT?

11:23AM 21 A. YES.

11:23AM 22 Q. AND IT GOES ON, "AT SCALE (2,501 LOCATIONS AND 22.5

11:23AM 23 PATIENTS PER DAY)."

11:23AM 24 DO YOU SEE THAT?

11:23AM 25 A. YES.

11:23AM 1 Q. SO HE'S TALKING ABOUT WHAT THOSE NUMBERS LIKE AT THAT TYPE
11:23AM 2 OF SCALE; RIGHT?
11:23AM 3 A. CORRECT.
11:23AM 4 Q. AND THAT'S ON MARCH 30TH, 2015?
11:24AM 5 A. YES, SIR.
11:24AM 6 Q. OKAY. LET'S LOOK AT EXHIBIT 20244.
11:24AM 7 20244 IS AN EMAIL STRING AT THE TOP, INCLUDING YOU AND
11:24AM 8 MR. BALWANI, FROM APRIL 8TH, 2015.
11:24AM 9 DO YOU SEE THAT?
11:24AM 10 A. YES.
11:24AM 11 Q. AND THEN THERE ARE -- BELOW THAT THERE'S REPORTS ON A
11:24AM 12 MATTER AFFECTING THERANOS AND WALGREENS RELATIONSHIP BY
11:24AM 13 MS. HAWORTH AND MS. ALPHONSO AND SO FORTH.
11:24AM 14 DO YOU SEE THAT?
11:24AM 15 A. YES, I DO.
11:24AM 16 Q. OKAY.
11:24AM 17 YOUR HONOR, WE OFFER EXHIBIT 20244.
11:24AM 18 MR. SCHENK: NO OBJECTION.
11:24AM 19 THE COURT: IT'S ADMITTED. IT MAY BE PUBLISHED.
11:24AM 20 (DEFENDANT'S EXHIBIT 20244 WAS RECEIVED IN EVIDENCE.)
11:25AM 21 BY MR. COOPERSMITH:
11:25AM 22 Q. OKAY. LET'S GO TO THE EARLIEST EMAIL IN TIME. AND JUST
11:25AM 23 TO ORIENT OURSELF, THIS IS APRIL 7TH, 2015; CORRECT?
11:25AM 24 A. YES.
11:25AM 25 Q. AND THAT EMAIL READS FROM PATTY HAWORTH "HI TRACY/KIM.

11:25AM 1 "WE'VE BEEN NOTICING HIGH PATIENT VOLUME AT THE FOLLOWING
11:25AM 2 STORES."
11:25AM 3 AND THEN IT HAS SOME FIGURES FOR FIVE DIFFERENT WALGREENS
11:25AM 4 STORES; CORRECT?
11:25AM 5 A. YES.
11:25AM 6 Q. AND THAT WAS, FOR EXAMPLE, AT STORE NUMBER 13596 THERE
11:25AM 7 WERE 21 PATIENTS?
11:25AM 8 A. CORRECT, FOR THAT DAY.
11:25AM 9 Q. FOR THAT DAY?
11:25AM 10 A. CORRECT.
11:25AM 11 Q. SO THESE ARE GOOD NUMBERS FOR AT LEAST THOSE STORES;
11:25AM 12 RIGHT?
11:25AM 13 A. YES.
11:25AM 14 Q. AND THEN BELOW THAT IT SAYS, "ALSO, MULTIPLE OTHER STORES
11:25AM 15 HIT 20 PLUS PATIENTS PER DAY BETWEEN 3/23 AND 4/3."
11:25AM 16 RIGHT?
11:25AM 17 A. YES.
11:25AM 18 Q. AND THEN MS. HAWORTH WRITES, "IS THERE AN EXPLANATION
11:25AM 19 BEHIND THIS, SUCH AS MARKETING AND SALES CAMPAIGN."
11:26AM 20 DO YOU SEE THAT?
11:26AM 21 A. YES.
11:26AM 22 Q. "PLEASE LET US KNOW ASAP. INQUIRING MINDS WANT TO KNOW,"
11:26AM 23 WITH A SMILEY EMOJI.
11:26AM 24 RIGHT?
11:26AM 25 A. YES.

11:26AM 1 Q. AND THEN ABOVE THAT, MS. ALPHONSO FROM THERANOS WRITES,
11:26AM 2 "THIS HAS BEEN THE GOAL ALL ALONG FOR SURE.
11:26AM 3 "I EXPECT MORE CONSISTENT AND STRONGER GROWTH AS WELL."
11:26AM 4 DO YOU SEE THAT?
11:26AM 5 A. YES.
11:26AM 6 Q. AND YOU FORWARD THE EMAIL TO MR. BALWANI; RIGHT?
11:26AM 7 A. YES.
11:26AM 8 Q. AND YOU SAID, "THOUGHTS?" YOU WANTED TO KNOW
11:26AM 9 MR. BALWANI'S THOUGHTS?
11:26AM 10 A. YES.
11:26AM 11 Q. AND THEN MR. BALWANI RESPONDED ABOVE THAT AND HE SAYS,
11:26AM 12 "PLAIN OLD MARKET TRACTION."
11:26AM 13 DO YOU SEE THAT?
11:26AM 14 A. YES.
11:26AM 15 Q. AND HE SAYS, "THE REASON IT HAS TAKEN LONGER IS BECAUSE
11:26AM 16 OUR COMPETITION IS DESPERATELY DOING EVERYTHING AND ANYTHING TO
11:26AM 17 STOP OUR GROWTH IN THIS MARKET."
11:26AM 18 DO YOU SEE THAT?
11:26AM 19 A. YES.
11:26AM 20 Q. "THIS WAS ANTICIPATED IN ALL PLANNING AND WAR-GAMING
11:26AM 21 SESSIONS WE DID WITH WALGREENS. FOR INSTANCE, SONORAQUEST HAS
11:26AM 22 BEEN REACHING OUT TO DOCS TO OFFER THEM THERANOS LIKE PRICES IF
11:26AM 23 THEY STOPPED SENDING US PATIENTS."
11:27AM 24 DO YOU SEE THAT?
11:27AM 25 A. YES.

11:27AM 1 Q. AND HE'S TALKING ABOUT THERE ONE OF THE COMPETITORS, WHICH
11:27AM 2 IS A LABORATORY CALLED SONORAQUEST; RIGHT?
11:27AM 3 A. YES.
11:27AM 4 Q. AND THAT'S A PART OF QUEST DIAGNOSTICS THAT OPERATES IN
11:27AM 5 ARIZONA; RIGHT?
11:27AM 6 A. CORRECT.
11:27AM 7 Q. AND THEN IF YOU GO BELOW, IT SAYS, "ONCE WE HAVE OUR
11:27AM 8 DEDICATED SPACES OR EVEN 40 PERCENT PLUS GOLD SPACES, WE WILL
11:27AM 9 BEGIN OUR MARKETING AND ADVERTISING CAMPAIGN WHICH HAS BEEN ON
11:27AM 10 HOLD UNTIL WE GET THE BUILD OUT DONE."
11:27AM 11 DO YOU SEE THAT?
11:27AM 12 A. YES.
11:27AM 13 Q. AND THAT'S WHAT MR. BALWANI WAS TELLING YOU ON APRIL 8TH,
11:27AM 14 2015?
11:27AM 15 A. CORRECT.
11:27AM 16 Q. AND HE SAID, "IN ADDITION, WE ANTICIPATE SIGNIFICANT
11:27AM 17 VOLUME FROM SEVERAL OTHER DEALS WE ARE WORKING ON."
11:27AM 18 DO YOU SEE THAT?
11:27AM 19 A. YES.
11:27AM 20 Q. "WE EXPECT 20 PLUS GUESTS IN EVERY STORE EVERY WORKDAY IN
11:27AM 21 A FEW MONTHS."
11:27AM 22 DO YOU SEE THAT?
11:27AM 23 A. I DO.
11:27AM 24 Q. ALL RIGHT. SO, MR. JHAVERI, IN CONNECTION WITH POTENTIAL
11:27AM 25 STORE BUILD OUTS AND SELECTION OF STORES, YOU'RE AWARE, RIGHT,

11:28AM 1 THAT WALGREENS HAD TO SEND THERANOS CERTAIN DATA REGARDING ALL
11:28AM 2 OF THEIR STORES AND THE DEMOGRAPHICS OF THOSE STORES; CORRECT?
11:28AM 3 A. CORRECT.
11:28AM 4 Q. AND THERE WAS A PERSON AT WALGREENS WHO WAS ACTUALLY
11:28AM 5 RESPONSIBLE FOR THAT TYPE OF THING; RIGHT?
11:28AM 6 A. THAT'S CORRECT.
11:28AM 7 Q. AND THAT WAS SOMEONE NAMED JASON BURKE?
11:28AM 8 A. CORRECT.
11:28AM 9 Q. AND YOU'RE AWARE THAT MR. BURKE SENT A LENGTHY SPREADSHEET
11:28AM 10 THAT HAD A LOT OF DEMOGRAPHICS ABOUT ALL OF WALGREENS STORES
11:28AM 11 NATIONWIDE; RIGHT?
11:28AM 12 A. I DIDN'T SEE ANY OF THE SPREADSHEETS, BUT I CAN TELL YOU
11:28AM 13 THERE WAS INFORMATION SHARED SO WE COULD SELECT THE RIGHT
11:28AM 14 STORES.
11:28AM 15 Q. OKAY. WELL, LET ME SHOW YOU EXHIBIT 206 -- LET ME GET THE
11:28AM 16 NUMBER RIGHT HERE -- EXHIBIT 20618.
11:28AM 17 MR. JHAVERI, YOU'RE NOT GOING TO FIND THESE IN YOUR
11:29AM 18 BINDERS BECAUSE IT WOULD BE MAYBE 2,000 PAGES IF WE PRINTED IT
11:29AM 19 OUT, SO I THINK WE WILL STICK TO THE SCREEN ON THIS ONE. I
11:29AM 20 THINK EVERYONE WOULD THANK ME.
11:29AM 21 IT'S EXHIBIT 20618, AND IT'S ON YOUR SCREEN AND IT'S NOT
11:29AM 22 IN EVIDENCE YET, SO LET'S JUST TALK ABOUT IT FIRST.
11:29AM 23 OKAY. YOU SEE THIS IS A LIST OF THOUSANDS AND THOUSANDS
11:29AM 24 OF WALGREENS STORES; RIGHT?
11:29AM 25 A. YES.

11:29AM 1 Q. AND IF YOU KIND OF SCROLL OVER TO THE RIGHT, YOU CAN SEE
11:29AM 2 SOME OF THE COLUMNS THERE. DO YOU SEE IT HAS ALL KINDS OF
11:29AM 3 SALES AND DEMOGRAPHICS FOR ALL KINDS OF STORES?
11:29AM 4 A. YES.
11:29AM 5 Q. AND THE PURPOSE OF THIS WAS TO MAKE SURE THAT THERANOS HAD
11:29AM 6 THIS DATA SO THAT THEY COULD ASSIST IN SELECTING WHICH STORES
11:29AM 7 COULD BE BUILT OUT; RIGHT?
11:29AM 8 A. CORRECT. WE, WE USE THIS DATA TO DETERMINE WHICH STORES
11:30AM 9 WE GO TO, WHICH LOCATIONS WE GO TO FOR NEW STORES, AND
11:30AM 10 REVIEWING EXISTING STORES, AND SO WE'RE USING THE SAME DATA TO
11:30AM 11 HELP THE THERANOS TEAM UNDERSTAND IN WHICH STORES WE SHOULD BE
11:30AM 12 OPENING A THERANOS WELLNESS CENTER.
11:30AM 13 Q. OKAY. AND, MR. ALLEN, IF YOU WOULD GO -- THIS IS WHAT IS
11:30AM 14 CALLED IN NATIVE FORM, SO IT'S THE ORIGINAL SPREADSHEET.
11:30AM 15 MR. ALLEN, IF YOU GO TO THE FILE TAB, AND YOU SEE THERE'S
11:30AM 16 AN INFO.
11:30AM 17 DO YOU SEE IT HAS SOME INFORMATION THERE ABOUT THE
11:30AM 18 CREATION OF THE DOCUMENT?
11:30AM 19 A. YES.
11:30AM 20 Q. AND DO YOU SEE MR. BURKE'S NAME?
11:30AM 21 A. YES, I DO.
11:30AM 22 MR. COOPERSMITH: YOUR HONOR, WE OFFER
11:30AM 23 EXHIBIT 20618.
11:30AM 24 THE COURT: HOW MANY PAGES IS THIS EXHIBIT?
11:30AM 25 MR. COOPERSMITH: I THINK, PRINTED OUT, IT WOULD

11:30AM 1 PROBABLY BE 2,000 PAGES, YOUR HONOR.

11:30AM 2 THE COURT: YOU WOULD LIKE TO INTRODUCE 2,000 PAGES?

11:30AM 3 MR. COOPERSMITH: UNFORTUNATELY, YES.

11:30AM 4 MR. SCHENK: OBJECTION. FOUNDATION, 401, AND 403.

11:31AM 5 THE COURT: I THINK I WILL NEED A LITTLE MORE

11:31AM 6 INFORMATION ABOUT THIS, MR. COOPERSMITH.

11:31AM 7 MR. COOPERSMITH: OKAY. SURE, YOUR HONOR.

11:31AM 8 THE COURT: SO I'LL SUSTAIN THE OBJECTION.

11:31AM 9 MR. COOPERSMITH: OKAY. WELL, I'LL ASK A FEW MORE

11:31AM 10 QUESTIONS IF THAT'S OKAY?

11:31AM 11 THE COURT: SURE.

11:31AM 12 MR. COOPERSMITH: THANK YOU.

11:31AM 13 Q. SO, MR. JHAVERI, THIS -- DO YOU UNDERSTAND THAT THIS DATA

11:31AM 14 WAS ASSEMBLED BY MR. BURKE?

11:31AM 15 A. I'M NOT SURE WHO IT WAS ASSEMBLED BY. WE HAVE A DATABASE

11:31AM 16 OF THAT.

11:31AM 17 Q. RIGHT.

11:31AM 18 A. SO HE'S EXTRACTING THIS TYPE OF INFORMATION FROM THE

11:31AM 19 DATABASE.

11:31AM 20 Q. AND MR. BURKE WOULD BE EXTRACTING INFORMATION FROM THE

11:31AM 21 DATABASE?

11:31AM 22 A. CORRECT.

11:31AM 23 Q. AND THEN HE WOULD ASSEMBLING A SPREADSHEET WITH ALL OF

11:31AM 24 THAT INFORMATION FROM THE DATABASE; CORRECT?

11:31AM 25 MR. SCHENK: OBJECTION. SPECULATION.

11:31AM 1 MR. COOPERSMITH: WELL, I'LL JUST ASK IF YOU KNOW.

11:31AM 2 DO YOU KNOW IF THAT'S WHAT MR. BURKE'S JOB WAS?

11:31AM 3 THE WITNESS: MR. BURKE'S JOB WAS NOT TO SIMPLY

11:31AM 4 EXTRACT DATA. HE WAS PART OF OUR MARKET PLANNING AND RESEARCH

11:31AM 5 DEPARTMENT, AND SO HE ASSISTED IN ANY TYPE OF ASSESSMENT THAT

11:31AM 6 NEEDED TO BE DONE FOR A STORE LOCATION OR A POTENTIAL LOCATION.

11:32AM 7 AND SO THAT'S WHAT HE DOES.

11:32AM 8 BY MR. COOPERSMITH:

11:32AM 9 Q. OKAY. SO HE WASN'T LIKE A DATA ENTRY PERSON IN OTHER

11:32AM 10 WORDS?

11:32AM 11 A. NOT THAT I REMEMBER, NO.

11:32AM 12 Q. RIGHT. BUT HE COULD ACCESS THE DATABASE; CORRECT?

11:32AM 13 A. CORRECT.

11:32AM 14 Q. AND IN THE DATABASE HE COULD FIND INFORMATION ABOUT EVERY

11:32AM 15 WALGREENS STORE IF HE WANTED TO; RIGHT?

11:32AM 16 A. CORRECT. THIS IS EXTREMELY CONFIDENTIAL INFORMATION, AND

11:32AM 17 SO WE MADE SURE THAT IT WAS ACCESSIBLE BY ONLY CERTAIN

11:32AM 18 INDIVIDUALS OR CERTAIN DEPARTMENTS THAT ACTUALLY REQUIRED IT TO

11:32AM 19 BE USED, AND SO THAT'S WHAT THIS INFORMATION IS ABOUT.

11:32AM 20 Q. OKAY. SO THIS EXTREMELY CONFIDENTIAL, SENSITIVE

11:32AM 21 INFORMATION, MR. BURKE HAD ACCESS TO; RIGHT?

11:32AM 22 A. IT SEEMS THAT WAY.

11:32AM 23 Q. RIGHT. BECAUSE HE CREATED THE SPREADSHEET?

11:32AM 24 A. CORRECT.

11:32AM 25 Q. AND MR. BURKE -- NORMALLY WALGREENS WOULD NOT SHARE THIS

11:32AM 1 INFORMATION WITH OTHER OUTSIDE PARTIES; RIGHT?

11:32AM 2 A. IT'S HARD TO SAY WHO WE WOULD SHARE IT WITH. WHEN IT

11:32AM 3 WOULD BE APPROPRIATE, THERE WOULD BE AN AGREEMENT IN PLACE, AN

11:33AM 4 NDA IN PLACE OF COURSE WITH A PARTNER, AND IF IT WAS

11:33AM 5 APPROPRIATE, WE WOULD SHARE WHAT WAS NECESSARY.

11:33AM 6 Q. OKAY. SO, FOR EXAMPLE, WALGREENS WOULD NOT WANT TO SHARE

11:33AM 7 THIS INFORMATION WITH THE CVS DRUG STORE CHAIN?

11:33AM 8 A. NO, WE WOULD NOT.

11:33AM 9 Q. OKAY. BUT IF YOU HAD A NONDISCLOSURE AGREEMENT, AN NDA,

11:33AM 10 THEN YOU MIGHT SHARE IT; RIGHT?

11:33AM 11 A. AND IF THERE WAS A BUSINESS PURPOSE TO SHARING IT.

11:33AM 12 Q. OKAY. AND THERE WAS AN NDA WITH THERANOS; RIGHT?

11:33AM 13 A. YES, THERE WAS.

11:33AM 14 Q. AND THIS DATA WAS SHARED WITH THERANOS PURSUANT TO AN NDA?

11:33AM 15 A. CORRECT.

11:33AM 16 Q. AND IF YOU LOOK BACK AT THAT FILE TAB, DO YOU SEE THAT IN

11:33AM 17 ADDITION TO THE AUTHOR, THERE'S ALSO A LAST MODIFIED?

11:33AM 18 A. YES, I DO.

11:33AM 19 Q. AND DO YOU SEE, WITHOUT SAYING IT OUT LOUD, DO YOU SEE

11:33AM 20 THAT THERE ARE SOME INITIALS NEXT TO THAT?

11:33AM 21 A. YES.

11:33AM 22 Q. AND YOU RECOGNIZE THOSE INITIALS; RIGHT?

11:33AM 23 A. I DO NOT.

11:33AM 24 Q. YOU DON'T? OKAY.

11:33AM 25 Q. OKAY. ARE YOU AWARE THAT THE DEFENDANT ON TRIAL IS

11:34AM 1 SUNNY BALWANI?

11:34AM 2 MR. SCHENK: OBJECTION. COUNSEL IS TESTIFYING NOW.

11:34AM 3 MR. COOPERSMITH: I'LL ASK A DIFFERENT QUESTION,

11:34AM 4 YOUR HONOR.

11:34AM 5 Q. MR. JHAVERI, DO YOU UNDERSTAND THAT MR. BALWANI'S INITIALS

11:34AM 6 WOULD BE S.B.?

11:34AM 7 A. IT WOULD BE, YES.

11:34AM 8 Q. OKAY. AND YOU SEE THOSE LETTERS IN THE DOCUMENT?

11:34AM 9 A. CORRECT.

11:34AM 10 Q. OKAY.

11:34AM 11 YOUR HONOR, AGAIN, I OFFER THIS DOCUMENT. IT'S APPARENTLY

11:34AM 12 DATA TRANSMITTED TO THERANOS REGARDING THOUSANDS AND THOUSANDS

11:34AM 13 OF WALGREENS STORES, AND WE WOULD LIKE TO OFFER THAT INTO

11:34AM 14 EVIDENCE AT THIS TIME.

11:34AM 15 MR. SCHENK: YOUR HONOR, THE SAME OBJECTION,

11:34AM 16 FOUNDATION, 401, 403, AND ALSO NOW I HAVE A CONCERN ABOUT

11:34AM 17 ADMITTING A DOCUMENT THAT APPARENTLY CONTAINS CONFIDENTIAL

11:34AM 18 BUSINESS INFORMATION WITHOUT LIMITATION.

11:34AM 19 THE COURT: MR. COOPERSMITH, I THINK THERE ARE SOME

11:34AM 20 FOUNDATIONAL ISSUES HERE AND SOME OTHER ISSUES, AND I'M GOING

11:35AM 21 TO SUSTAIN THE OBJECTION.

11:35AM 22 IF YOU WANT TO TALK ABOUT IT LATER, I'M HAPPY TO DO THAT.

11:35AM 23 BUT FOR NOW I'M GOING TO SUSTAIN THE OBJECTION.

11:35AM 24 MR. COOPERSMITH: YEAH. YOUR HONOR, I UNDERSTAND.

11:35AM 25 IF WE CAN TAKE IT UP LATER, WE WOULD APPRECIATE THAT. THANK

11:35AM 1 YOU.

11:35AM 2 Q. MR. JHAVERI, LET'S -- WITHOUT REFERENCE TO THE EXHIBIT,

11:35AM 3 OKAY, IN 2015 WE HAVE JUST SEEN THAT THERE ARE THESE ONGOING

11:35AM 4 PARTNERSHIP MEETINGS; RIGHT?

11:35AM 5 A. YES.

11:35AM 6 Q. OKAY. LET'S GO TO EXHIBIT 20247 ON THAT TOPIC.

11:36AM 7 OKAY. MR. JHAVERI, DO YOU SEE THAT EXHIBIT 20247 IS AN

11:36AM 8 EMAIL STRING AMONG YOU AND MR. BALWANI RELATING TO PHX, OR

11:36AM 9 PHOENIX EXPANSION?

11:36AM 10 DO YOU SEE THAT?

11:36AM 11 A. YES.

11:36AM 12 Q. AND THIS IS PART OF THE ONGOING WORK AT THERANOS?

11:36AM 13 A. CORRECT. WELL, THIS IS IN REFERENCE TO BOTH EXISTING AND

11:36AM 14 POTENTIAL NEW SITES THAT WE ARE LOOKING TO EITHER REMODEL OR

11:36AM 15 OPEN.

11:36AM 16 Q. OKAY. THIS IS FROM JUNE 4TH, 2015?

11:36AM 17 A. YES.

11:36AM 18 MR. COOPERSMITH: YOUR HONOR, WE OFFER

11:36AM 19 EXHIBIT 20247.

11:36AM 20 MR. SCHENK: NO OBJECTION.

11:36AM 21 BUT I WONDER IF, IN LIGHT OF MR. JHAVERI'S RECENT

11:36AM 22 TESTIMONY, THE CHART ON PAGES 2 AND 3 SHOULD BE REDACTED.

11:37AM 23 MR. COOPERSMITH: I DON'T KNOW IF THIS PARTICULAR

11:37AM 24 CHART CONTAINS ANY CONFIDENTIAL SENSITIVE BUSINESS INFORMATION,

11:37AM 25 BUT I GUESS MR. JHAVERI CAN PROBABLY TELL US THAT.

11:37AM 1 THE COURT: WHY DON'T WE ASK?

11:37AM 2 MR. COOPERSMITH: YEAH. THAT'S GREAT.

11:37AM 3 Q. MR. JHAVERI, JUST TO BE CAREFUL WITH WALGREENS'S SENSITIVE

11:37AM 4 CONFIDENTIAL INFORMATION, DO YOU SEE ON THE CHART ON PAGE 2

11:37AM 5 AND 3 THAT YOU'RE LOOKING AT? IS ANY OF THIS CONFIDENTIAL OR

11:37AM 6 SENSITIVE IN TERMS OF WALGREENS BUSINESS INFORMATION? YOU

11:37AM 7 KNOW, IT HAS ADDRESSES AND ZIP CODES AND THINGS, BUT, PLEASE,

11:37AM 8 TELL US IF YOU'RE AWARE OF ANYTHING.

11:37AM 9 A. WELL, I CAN'T SEE THE ENTIRE CHART, SO THERE OBVIOUSLY IS

11:37AM 10 A CHART THAT IS CUT OFF, PART OF THE CHART IS CUT OFF, SO I

11:37AM 11 DON'T KNOW WHAT IS IN THE INFORMATION.

11:37AM 12 IF IT'S THE SAME INFORMATION BASED ON THE PREVIOUS EXHIBIT

11:37AM 13 THAT YOU SHOWED, THEN I WOULD SAY, YES, IT DOES CONTAIN

11:37AM 14 CONFIDENTIAL INFORMATION, BUT IT'S OBVIOUSLY CUT OFF.

11:37AM 15 Q. OKAY. SO JUST TO CLARIFY, THIS EXHIBIT, IF IT WERE GOING

11:38AM 16 TO BE DISPLAYED TO THE JURY, IF THE JUDGE ALLOWED THAT, IT

11:38AM 17 WOULD ONLY BE THIS EXHIBIT. IT'S A STANDALONE EXHIBIT.

11:38AM 18 NOTHING ELSE WOULD COME IN OTHER THAN WHAT YOU SEE ON THE PAPER

11:38AM 19 IN FRONT OF YOU.

11:38AM 20 SO JUST LOOKING AT THAT INFORMATION, DOES ANYTHING STRIKE

11:38AM 21 YOU AS CONFIDENTIAL OR SENSITIVE?

11:38AM 22 A. NO.

11:38AM 23 THE COURT: ALL RIGHT. I'LL ADMIT IT AND IT MAY BE

11:38AM 24 PUBLISHED.

11:38AM 25 (DEFENDANT'S EXHIBIT 20247 WAS RECEIVED IN EVIDENCE.)

11:38AM 1 BY MR. COOPERSMITH:

11:38AM 2 Q. LET'S GO TO THE FIRST EMAIL IN TIME, WHICH IS THE BOTTOM

11:38AM 3 OF PAGE 1, FROM MR. BLICKMAN. AND DO YOU SEE IT HAS PHOENIX

11:38AM 4 EXPANSION LIST TO PROCEED?

11:38AM 5 DO YOU SEE THAT?

11:38AM 6 A. YES.

11:38AM 7 Q. AND THEN IF YOU GO TO THE NEXT PAGE, IT SAYS, "HI

11:38AM 8 CASEY/PATTY -- PER RECENT CONVERSATIONS, WE NEED TO MOVE

11:38AM 9 FORWARD ASAP WITH THE MUTUALLY AGREED UPON LOCATIONS, GET D1'S

11:38AM 10 FINALIZED, REVIEWED, AND APPROVED TO BEGIN CONSTRUCTION."

11:39AM 11 DO YOU SEE THAT?

11:39AM 12 A. YES.

11:39AM 13 Q. AND THEN IT SAYS, "BELOW IS AN EXTRACTED LIST OF THE 34

11:39AM 14 PHX-AREA LOCATIONS (EXISTING AND NEW) THAT ARE APPROVED."

11:39AM 15 DO YOU SEE THAT?

11:39AM 16 A. YES.

11:39AM 17 Q. AND THEN IT HAS A LIST OF VARIOUS LOCATIONS; RIGHT?

11:39AM 18 A. YES.

11:39AM 19 Q. WALGREENS LOCATIONS?

11:39AM 20 A. THESE ARE WALGREENS LOCATIONS.

11:39AM 21 Q. RIGHT. AND THEN IF YOU GO TO THE PAGE -- I'M SORRY, THE

11:39AM 22 EMAIL ON PAGE 1 FROM MR. BALWANI AT THE BOTTOM.

11:39AM 23 HE SAYS, "NIM.

11:39AM 24 "FYI. THESE 34 STORES IN THE PHOENIX METRO AREAS ARE

11:39AM 25 FINALIZED, BUT BOTH OUR TEAMS ARE FINAL."

11:39AM 1 DO YOU SEE THAT?

11:39AM 2 A. YES.

11:39AM 3 Q. AND THEN YOU WROTE BACK, "TERRIFIC. THANK YOU. I AM

11:39AM 4 DRIVING HARD TO GET THE TEAMS TO NAIL DOWN THE STORES AS SOON

11:39AM 5 AS POSSIBLE. CAN YOU DO ME A FAVOR AND PUSH ON YOUR SIDE AS

11:39AM 6 WELL?"

11:39AM 7 DO YOU SEE THAT?

11:39AM 8 A. YES.

11:39AM 9 Q. AND THEN SUNNY BALWANI WROTE, "NIM.

11:39AM 10 "SINCE WE WON'T BE ABLE TO GET EVERYTHING DONE IN

11:39AM 11 PARALLEL, IS IT POSSIBLE TO GET STARTED WITH THESE 34 SO WE

11:40AM 12 HAVE THESE READY WHILE WE WORK THE REST OF THE 10-12 IN

11:40AM 13 PHOENIX?"

11:40AM 14 DO YOU SEE THAT?

11:40AM 15 A. YES.

11:40AM 16 Q. AND YOU WROTE, "YES, WE ARE ON THE SAME PAGE. I SENT THE

11:40AM 17 NOTE TO ALL AREAS TO BEGIN WORK ON THE 34 IMMEDIATELY AS WE

11:40AM 18 ALIGN AROUND THE NEXT 31."

11:40AM 19 DO YOU SEE THAT?

11:40AM 20 A. YES.

11:40AM 21 Q. AND THEN MR. BALWANI RESPONDED, "AWESOME. THANKS."

11:40AM 22 RIGHT?

11:40AM 23 A. YES.

11:40AM 24 Q. AND YOU CAN PUT THAT ASIDE.

11:40AM 25 LET'S GO REGARDING THE CONTRACT THAT WE'VE BEEN

11:40AM 1 DISCUSSING, 20233.

11:40AM 2 DO YOU SEE THIS IS ANOTHER EMAIL STRING BETWEEN YOU AND

11:40AM 3 MR. BALWANI AND OTHERS AT WALGREENS?

11:40AM 4 A. YES, IT IS.

11:40AM 5 Q. AND THIS IS FROM JUNE 8TH AND 9TH, 2015?

11:41AM 6 A. YES.

11:41AM 7 Q. AND IT CONCERNS THE RECAP OF THE MEETING CONCERNING THE

11:41AM 8 PARTNERSHIP; CORRECT?

11:41AM 9 A. YES.

11:41AM 10 Q. OKAY.

11:41AM 11 YOUR HONOR, WE OFFER 20233.

11:41AM 12 MR. SCHENK: NO OBJECTION.

11:41AM 13 THE COURT: IT'S ADMITTED AND IT MAY BE PUBLISHED.

11:41AM 14 (DEFENDANT'S EXHIBIT 20233 WAS RECEIVED IN EVIDENCE.)

11:41AM 15 BY MR. COOPERSMITH:

11:41AM 16 Q. MR. JHAVERI, AT THE BOTTOM YOU SEE THERE'S AN EMAIL FROM

11:41AM 17 YOU DATED JUNE 8TH TO MR. BALWANI WITH A COPY TO OTHERS.

11:41AM 18 DO YOU SEE THAT?

11:41AM 19 A. YES.

11:41AM 20 Q. AND IT SAYS, "GOOD MORNING, SUNNY,

11:41AM 21 "THANK YOU FOR THE PRODUCTIVE MEETING FRIDAY AFTERNOON.

11:41AM 22 BELOW IS THE RECAP OF THE MEETING."

11:41AM 23 AND THEN IT SAYS, "THERANOS WILL PAY WALGREENS \$6 SQUARE

11:41AM 24 FOOT IN MONTHLY RENT (NATIONAL AVERAGE)."

11:41AM 25 DO YOU SEE THAT?

11:41AM 1 A. YES.

11:41AM 2 Q. AND THEN "THERANOS WILL PAY WALGREENS A \$4 PATIENT SERVICE

11:41AM 3 FEE."

11:41AM 4 RIGHT?

11:41AM 5 A. YES.

11:41AM 6 Q. AND THIS WAS PART OF THE RENEGOTIATION OF THE CONTRACT

11:42AM 7 BETWEEN WALGREENS AND THERANOS; CORRECT?

11:42AM 8 A. CORRECT.

11:42AM 9 Q. AND THAT THE FEE IN THE EMAIL THAT WE JUST LOOKED AT, THE

11:42AM 10 FEE THAT WAS \$10 PER PATIENT IF THE CONTRACT WERE SIGNED IN

11:42AM 11 THIS FASHION, THE FEE WOULD GO DOWN TO \$4; RIGHT?

11:42AM 12 A. CORRECT.

11:42AM 13 THE FEE WOULD GO DOWN TO \$4, AND THEN YOU'LL NOTICE THAT

11:42AM 14 THERE'S AN ADDITION OF \$6 PER SQUARE FOOT FOR MONTHLY RENT.

11:42AM 15 Q. RIGHT. BUT THAT AMOUNT FOR THE AMOUNT OF SQUARE FOOTAGE

11:42AM 16 THAT THERANOS WOULD BE TAKING UP IN THE STORE, THAT WOULD BE A

11:42AM 17 RELATIVELY LOW AMOUNT COMPARED TO THE FEE; RIGHT?

11:42AM 18 A. IT'S ALL BASED ON THE SQUARE FOOTAGE OF THAT SPACE.

11:42AM 19 Q. SO IF THE SQUARE FOOTAGE WAS EVEN 1,000 FEET, THAT WOULD

11:42AM 20 BE -- GOT IT. THANK YOU. SORRY ABOUT THAT.

11:42AM 21 IF THERE WAS 1,000 SQUARE FEET, IT WOULD BE \$6,000 A MONTH

11:42AM 22 IN RENT; RIGHT?

11:42AM 23 A. THAT'S CORRECT.

11:42AM 24 Q. AND IF IT WAS 100 SQUARE FEET, IT WOULD BE \$600 A MONTH;

11:43AM 25 RIGHT?

11:43AM 1 A. THAT'S CORRECT.

11:43AM 2 Q. BUT THE OTHER PART OF IT, THE \$4 PER PATIENT, THAT WOULD

11:43AM 3 BE EVERY PATIENT THAT WOULD COME IN, WALGREENS WOULD CAPTURE

11:43AM 4 \$4; RIGHTS?

11:43AM 5 A. FOR THERANOS SERVICES, RIGHT.

11:43AM 6 Q. RIGHT. AND THAT WOULD BE DIFFERENT FROM THE PREVIOUS

11:43AM 7 AGREEMENT, WHICH WAS \$10; RIGHT?

11:43AM 8 A. THAT'S CORRECT.

11:43AM 9 Q. BUT THEN THERE WOULD BE OTHER THINGS THAT WOULD HAPPEN IN

11:43AM 10 EXCHANGE, LIKE WE TALKED ABOUT ALREADY, THERANOS WOULD BE

11:43AM 11 TAKING OVER PROVIDING THE PHLEBOTOMISTS AND PROVIDING THE

11:43AM 12 ACTUAL SERVICES; RIGHT?

11:43AM 13 A. CORRECT.

11:43AM 14 Q. AND WALGREENS MIGHT STILL PROVIDE SOME CHECK IN SERVICES?

11:43AM 15 A. WE WOULD -- WE WOULD STILL BE PROVIDING THE CHECK IN

11:43AM 16 SERVICES.

11:43AM 17 Q. AND THAT WAS THE NEW RELATIONSHIP THAT YOU WERE -- AND YOU

11:43AM 18 AND YOUR COLLEAGUES WERE TALKING ABOUT WITH THERANOS AT THE

11:43AM 19 TIME IN 2015; RIGHT?

11:43AM 20 A. CORRECT. THESE WERE THE BULLET POINTS FROM THAT

11:43AM 21 DISCUSSION, CORRECT.

11:43AM 22 Q. OKAY. AND THEN MR. BALWANI RESPONDED TO YOUR EMAIL AND HE

11:43AM 23 WROTE, "NIM.

11:43AM 24 "THANKS FOR THE EMAIL.

11:43AM 25 "CONFIRMING THIS IS WHAT WE DISCUSSED. WE LOOK FORWARD TO

11:43AM 1 THE CONTRACT DRAFT FROM GREG."

11:43AM 2 RIGHT?

11:44AM 3 A. YES.

11:44AM 4 Q. AND THEN IT SAYS -- YOU WROTE BACK, "THANK YOU SUNNY. WE

11:44AM 5 ARE VERY EXCITED TO MOVE OUR RELATIONSHIP TO THE NEXT LEVEL. I

11:44AM 6 HAVE NO DOUBT THAT WE WILL DRIVE SUCCESS FOR BOTH OF OUR

11:44AM 7 ORGANIZATIONS AND MORE IMPORTANTLY, OUR PATIENTS."

11:44AM 8 DO YOU SEE THAT?

11:44AM 9 A. YES.

11:44AM 10 Q. AND YOU WERE SINCERE WHEN YOU WROTE THAT; RIGHT?

11:44AM 11 A. YES, I WAS.

11:44AM 12 Q. OKAY.

11:44AM 13 YOUR HONOR, I'M JUST GOING TO INQUIRE, WE HAVE MADE GOOD

11:44AM 14 PROGRESS, AND I THINK THERE'S MAYBE ANOTHER HALF HOUR OR SO

11:44AM 15 LEFT.

11:44AM 16 WOULD THE COURT PREFER THAT WE CONTINUE, OR TO TAKE A

11:44AM 17 BREAK? OR WHATEVER THE COURT PREFERS?

11:44AM 18 THE COURT: IF WE COULD GO FORWARD AND FINISH.

11:44AM 19 WHY DON'T WE HAVE FOLKS TAKE A STANDING BREAK NOW, IF YOU

11:44AM 20 DON'T MIND, AND THEN IF WE CAN BREAK -- IF YOU'RE GOING TO

11:44AM 21 FINISH IN ABOUT 30 MINUTES.

11:44AM 22 MR. COOPERSMITH: I'M ESTIMATING, YOUR HONOR, YES.

11:44AM 23 THE COURT: OKAY. FOLKS, ANY OBJECTION TO GOING 30

11:44AM 24 MORE MINUTES?

11:44AM 25 OKAY. OUR GOOD JURORS AGREE WITH THAT.

11:45AM 1 SO GO AHEAD AND STAND UP FOR A MINUTE, FOLKS, EVERYONE,
11:45AM 2 AND TAKE A BREAK. THANK YOU.
11:45AM 3 (STRETCHING.)
11:45AM 4 THE COURT: ALL RIGHT. THANK YOU, MR. COOPERSMITH.
11:45AM 5 MR. COOPERSMITH: THANK YOU, YOUR HONOR.
11:45AM 6 Q. OKAY. MR. JHAVERI, LET'S LOOK AT ONE MORE OF THESE
11:45AM 7 PARTNERSHIP MEETING DOCUMENTS, AND THAT'S EXHIBIT 2859.
11:46AM 8 A. I HAVE IT.
11:46AM 9 Q. AND THIS IS AN EXECUTIVE THERANOS SUMMARY PARTNERSHIP.
11:46AM 10 DO YOU SEE THAT?
11:46AM 11 A. I DO.
11:46AM 12 Q. AND IT'S DATED OCTOBER 15TH, 2015; RIGHT?
11:46AM 13 A. YES.
11:46AM 14 Q. AND IT'S FROM THE DIAGNOSTIC TESTING TEAM TO YOU.
11:46AM 15 DO YOU SEE THAT?
11:46AM 16 A. YES.
11:46AM 17 Q. AND IT HAS SOME MORE METRICS, SOME DATA ABOUT THE THERANOS
11:46AM 18 STORES?
11:46AM 19 A. YES.
11:46AM 20 Q. OKAY.
11:46AM 21 YOUR HONOR, WE OFFER 2859.
11:46AM 22 MR. SCHENK: NO OBJECTION.
11:46AM 23 THE COURT: IT'S ADMITTED. IT MAY BE PUBLISHED.
11:46AM 24 (GOVERNMENT'S EXHIBIT 2859 WAS RECEIVED IN EVIDENCE.)
11:46AM 25 BY MR. COOPERSMITH:

11:46AM 1 Q. MR. JHAVERI, YOU SEE AT THE TOP THE DATE AND THE
11:47AM 2 INFORMATION THAT I JUST WENT OVER; RIGHT?
11:47AM 3 A. YES.
11:47AM 4 Q. AND THEN THE CURRENT STATUS, IT SAYS 40 STORES CURRENTLY
11:47AM 5 RUNNING OLD MODEL IN ARIZONA (WAG CHECK IN AT PHARMACY)."
11:47AM 6 DO YOU SEE THAT?
11:47AM 7 A. YES.
11:47AM 8 Q. "THERANOS USING PHR AS PRIMARY SPACE)."
11:47AM 9 DO YOU SEE THAT?
11:47AM 10 A. YES, I DO.
11:47AM 11 Q. AND IF YOU GO TO THE LAST BULLET THERE IN THAT SECTION, IT
11:47AM 12 SAYS "CONTRACT BEING REVIEWED INTERNALLY BY M & A AND SHOULD BE
11:47AM 13 SIGNED SOON."
11:47AM 14 A. YES.
11:47AM 15 Q. AND M & A STANDS FOR MERGERS AND ACQUISITIONS?
11:47AM 16 A. IT DOES.
11:47AM 17 Q. AND THAT'S A DEPARTMENT IN WALGREENS; RIGHT?
11:47AM 18 A. CORRECT, ALL OF OUR PARTNERSHIPS ARE WRITTEN BY THAT TEAM.
11:47AM 19 Q. THEY HAVE TO REVIEW IT AND SIGN OFF BEFORE IT CAN BE SENT
11:47AM 20 OUT FOR SIGNATURE; CORRECT?
11:47AM 21 A. CORRECT.
11:47AM 22 Q. AND THEN IT HAS THE NEW MODEL ROLLOUT BELOW THAT.
11:47AM 23 A. YES.
11:47AM 24 Q. AND IT HAS SOME INFORMATION ABOUT ARIZONA PILOT RELAUNCH;
11:48AM 25 RIGHT?

11:48AM 1 A. YES.

11:48AM 2 Q. AND THAT WOULD BE WITH THE NEW BUSINESS MODEL THAT WE HAVE

11:48AM 3 BEEN DISCUSSING; RIGHT?

11:48AM 4 A. CORRECT.

11:48AM 5 Q. AND THEN SEVEN CENTRAL PENNSYLVANIA STORES, AND IT HAS AN

11:48AM 6 ESTIMATED DATE; RIGHT?

11:48AM 7 A. YES.

11:48AM 8 Q. AND TENNESSEE STORE.

11:48AM 9 DO YOU SEE THAT?

11:48AM 10 A. YES.

11:48AM 11 Q. AND THEN ILLINOIS, WISCONSIN WILL LIKELY BE THE NEXT

11:48AM 12 MARKETS AFTER THAT; RIGHT?

11:48AM 13 A. YES.

11:48AM 14 Q. AND THEN BELOW IT HAS CURRENT FINANCIAL INFORMATION, AND

11:48AM 15 AT THIS POINT THE WEEKLY AVERAGE IS UP TO 13.5 PATIENTS PER DAY

11:48AM 16 PER STORE?

11:48AM 17 A. YES.

11:48AM 18 Q. AND IT'S GETTING CLOSER TO THAT 15 PATIENTS PER DAY PER

11:48AM 19 STORE; RIGHT?

11:48AM 20 A. YES.

11:48AM 21 Q. AND THEN THERE ARE SOME METRICS ABOUT THE SORT OF THINGS

11:48AM 22 WE LOOKED AT BEFORE, LIKE THE CUSTOMER FEEDBACK; RIGHT?

11:48AM 23 A. YES.

11:48AM 24 Q. OKAY. SO, MR. JHAVERI, THE DATE OF THIS DOCUMENT IS

11:49AM 25 OCTOBER 15TH, 2015; RIGHT?

11:49AM 1 A. YES.

11:49AM 2 Q. AND DO YOU RECALL THAT ON THAT VERY DAY THERE WAS A

11:49AM 3 NEGATIVE "WALL STREET JOURNAL" ARTICLE THAT CAME OUT; RIGHT?

11:49AM 4 A. CORRECT.

11:49AM 5 Q. AND UP UNTIL THAT DAY, THERE WAS STILL -- THERE WAS THIS

11:49AM 6 ONGOING RELATIONSHIP TALKING ABOUT PLANNING FOR THE FUTURE

11:49AM 7 BETWEEN WALGREENS AND THERANOS; RIGHT?

11:49AM 8 A. THAT'S CORRECT.

11:49AM 9 Q. AND THAT ARTICLE CHANGED THINGS; RIGHT?

11:49AM 10 A. IT DID.

11:49AM 11 Q. OKAY. AND EVEN THOUGH M & A WAS REVIEWING THE CONTRACT,

11:49AM 12 ACTUALLY, AS IT TURNED OUT, THAT NEW CONTRACT NEVER GOT SIGNED;

11:49AM 13 RIGHT?

11:49AM 14 A. IT NEVER DID GET SIGNED.

11:49AM 15 Q. RIGHT. OKAY. LET'S PUT THAT ASIDE, MR. JHAVERI, AND TALK

11:49AM 16 ABOUT A DIFFERENT TOPIC REAL BRIEFLY.

11:49AM 17 SO WALGREENS -- YOU NO LONGER WORK FOR WALGREENS; RIGHT?

11:49AM 18 A. I DO NOT.

11:49AM 19 Q. BUT YOU'RE STILL AWARE OF SOME THINGS ABOUT WALGREENS THAT

11:50AM 20 YOU SEE AND HEAR; RIGHT?

11:50AM 21 A. IT DEPENDS ON WHAT YOU'RE REFERRING TO.

11:50AM 22 Q. SURE. WELL, WHAT I'LL ASK YOU ABOUT IN PARTICULAR IS THAT

11:50AM 23 YOU'RE AWARE THAT WALGREENS PUT, AT SOME POINT, BLOOD TESTING

11:50AM 24 SERVICES IN THEIR STORES; RIGHT?

11:50AM 25 MR. SCHENK: OBJECTION. RELEVANCE.

11:50AM 1 THE COURT: ARE YOU TALKING POST? CAN YOU TIME
11:50AM 2 STAMP THAT FOR US?
11:50AM 3 MR. COOPERSMITH: SURE. LET ME STEP BACK FOR A
11:50AM 4 MINUTE, YOUR HONOR, AND MR. JHAVERI.
11:50AM 5 Q. SO REMEMBER THAT IN THE COURSE OF OUR DISCUSSION, AND ALSO
11:50AM 6 WITH MR. SCHENK, WE HAD BEEN TALKING ABOUT THIS ISSUE OF
11:50AM 7 VENIPUNCTURE AND FINGERSTICK; RIGHT?
11:50AM 8 A. YES.
11:50AM 9 Q. AND THE PERCENTAGES; RIGHT?
11:50AM 10 A. YES.
11:50AM 11 Q. AND WE SAW SOME DOCUMENTS THAT DISCUSSED THAT TOPIC;
11:50AM 12 RIGHT?
11:50AM 13 A. CORRECT.
11:50AM 14 Q. AND YOU'RE AWARE THAT OTHER COMPETITORS OF THERANOS USED
11:50AM 15 TRADITIONAL VENOUS DRAWS EXCLUSIVELY; RIGHT?
11:50AM 16 A. YES.
11:50AM 17 Q. AND ONE OF THOSE COMPETITORS WAS LABCORP?
11:50AM 18 A. YES.
11:50AM 19 Q. AND LABCORP IS A GIANT LAB CORPORATION THAT HAS SITES ALL
11:51AM 20 OVER THE UNITED STATES; RIGHT?
11:51AM 21 A. CORRECT.
11:51AM 22 Q. AND THEY DO ALL VENOUS DRAW?
11:51AM 23 A. AS FAR AS I KNOW, YES.
11:51AM 24 Q. AND YOU'RE AWARE THAT LABCORP IS ACTUALLY IN WALGREENS
11:51AM 25 STORES TO THIS DAY?

11:51AM 1 MR. SCHENK: OBJECTION. RELEVANCE.

11:51AM 2 THE COURT: SUSTAINED.

11:51AM 3 BY MR. COOPERSMITH:

11:51AM 4 Q. OKAY. LET'S GO ON, MR. JHAVERI, TO A DIFFERENT TOPIC, AND

11:51AM 5 THAT IS SOME THINGS THAT MR. SCHENK ASKED YOU A COUPLE WEEKS

11:51AM 6 AGO WHEN YOU WERE LAST HERE, AND THAT IS WITH REGARD TO A VISIT

11:51AM 7 THAT YOU TOOK TO THERANOS IN AUGUST OF 2013.

11:51AM 8 DO YOU REMEMBER THAT?

11:51AM 9 A. YES, I DO.

11:51AM 10 Q. AND THAT WAS ACTUALLY BEFORE YOU GOT HEAVILY INVOLVED IN

11:51AM 11 THE PARTNERSHIP WORK THAT WE'VE BEEN DISCUSSING FOR A LITTLE

11:51AM 12 WHILE NOW; RIGHT?

11:51AM 13 A. YES.

11:51AM 14 Q. OKAY. AND IN THAT MEETING AT THERANOS, YOU ACTUALLY HAD

11:51AM 15 YOUR BLOOD DRAWN; CORRECT?

11:51AM 16 A. YES.

11:51AM 17 Q. IT WAS AT THERANOS'S HEADQUARTERS; RIGHT?

11:52AM 18 A. IT WAS.

11:52AM 19 Q. AND YOU GOT YOUR BLOOD DRAWN BY A FINGERSTICK; RIGHT?

11:52AM 20 A. YES.

11:52AM 21 Q. AND THEN THERANOS RAN TESTS?

11:52AM 22 A. ON MY BLOOD SAMPLE, YES.

11:52AM 23 Q. AND YOU HAD OTHER COLLEAGUES WITH YOU; RIGHT?

11:52AM 24 A. YES.

11:52AM 25 Q. AND THEY GOT BLOOD TESTS AS WELL?

11:52AM 1 A. SOME OF THEM DID. NOT ALL OF THEM.

11:52AM 2 Q. BUT YOU DID?

11:52AM 3 A. YES, I DID.

11:52AM 4 Q. AND WHEN YOU GOT BACK TO CHICAGO, YOU GOT RESULTS; RIGHT?

11:52AM 5 A. I DID.

11:52AM 6 Q. AND YOU RECEIVED A COPY OF THE RESULTS; RIGHT?

11:52AM 7 A. I RECEIVED AN EMAIL WITH MY RESULT.

11:52AM 8 Q. OKAY. AND IF WE CAN TAKE A LOOK AT EXHIBIT 966.

11:52AM 9 AND IF YOU GO TO THE NEXT PAGE, MR. ALLEN.

11:52AM 10 DO YOU SEE THAT THERE'S YOUR NAME AT THE TOP THERE?

11:53AM 11 A. I'M SORRY. THIS IS 966B?

11:53AM 12 Q. WE ARE GOING TO LOOK AT 966B IN A MINUTE, MR. JHAVERI.

11:53AM 13 BUT FOR NOW, LET'S JUST LOOK AT 966, IF THAT HELPS.

11:53AM 14 THE COURT: I DON'T BELIEVE IT'S IN THE BINDER.

11:53AM 15 THE WITNESS: IT'S NOT.

11:53AM 16 THE COURT: IT'S NOT IN MY BINDER. I'M CERTAIN IT'S

11:53AM 17 NOT IN THE OTHERS.

11:53AM 18 MR. COOPERSMITH: OKAY. IT'S NOT IN THE BINDERS.

11:53AM 19 CAN WE LOOK AT IT ON THE SCREEN?

11:53AM 20 THE COURT: YES. IT'S NOT IN EVIDENCE?

11:53AM 21 MR. COOPERSMITH: I THINK IT IS IN EVIDENCE.

11:53AM 22 THE COURT: ALL RIGHT. THEN IT CAN BE DISPLAYED TO

11:53AM 23 THE JURY.

11:53AM 24 BY MR. COOPERSMITH:

11:53AM 25 Q. THEN WE'RE LOOKING AT PAGE 7 OF 966.

11:53AM 1 DO YOU SEE THAT ON THE SCREEN NOW?

11:53AM 2 A. I DO.

11:53AM 3 Q. AND DO YOU SEE THAT THAT'S YOUR NAME AT THE TOP?

11:53AM 4 A. YES, SIR.

11:53AM 5 Q. AND THEN AT THE TOP ABOVE THAT, IT'S THERANOS TEST REPORT

11:53AM 6 TECHNOLOGY DEMONSTRATION; RIGHT?

11:53AM 7 A. YES, SIR.

11:53AM 8 Q. AND DO YOU REMEMBER MR. SCHENK ASKED YOU SOME QUESTIONS

11:53AM 9 ABOUT THIS?

11:53AM 10 A. I DO.

11:53AM 11 Q. OKAY. NOW, IF YOU GO DOWN BELOW, YOU SEE THERE'S, LIKE,

11:54AM 12 PATIENT RESULTS AND REFERENCE RANGE.

11:54AM 13 NOTHING APPEARS THERE; RIGHT?

11:54AM 14 A. NO.

11:54AM 15 Q. OKAY. WELL, LET'S GO TO 966B, THAT ONE THAT YOU JUST

11:54AM 16 MENTIONED.

11:54AM 17 AND THIS ONE IS NOT IN EVIDENCE YET.

11:54AM 18 A. I HAVE IT.

11:54AM 19 Q. THANK YOU.

11:54AM 20 A. SORRY.

11:54AM 21 Q. YOU SEE THAT 966B IS THE SAME EMAIL ON THE COVER AS 966,

11:54AM 22 AND THEN AT PAGE 7, IT'S THE SAME RESULTS PAGE THAT WE HAVE ON

11:54AM 23 THE SCREEN, BUT IT ACTUALLY HAS THE RESULTS FILLED IN.

11:54AM 24 DO YOU SEE THAT?

11:54AM 25 A. YES, I DO.

11:55AM 1 Q. OKAY. AND SO WHEN YOU GOT THAT EMAIL THAT YOU TALKED
11:55AM 2 ABOUT A FEW MINUTES AGO FROM THERANOS AFTER YOU GOT THE
11:55AM 3 FINGERSTICK TEST AT THEIR HEADQUARTERS IN AUGUST OF '13, YOU
11:55AM 4 ACTUALLY GOT THE RESULTS IN THIS FORM FROM THERANOS; CORRECT?
11:55AM 5 A. YES, I DID.
11:55AM 6 Q. AND WHAT YOU'RE LOOKING AT IN 966B IS ACTUALLY WHAT YOU
11:55AM 7 RECEIVED; RIGHT?
11:55AM 8 A. YES.
11:55AM 9 Q. OKAY. AND THE REASON I'M DOING IT THIS WAY, MR. JHAVERI,
11:55AM 10 IS THAT I DON'T WANT TO SHOW YOUR PRIVATE HEALTH INFORMATION
11:55AM 11 OUT FOR THE WHOLE WORLD TO SEE. OKAY?
11:55AM 12 BUT JUST SO WE'RE CLEAR, 966B DOES HAVE RESULTS FOR ALL OF
11:55AM 13 THE ASSAYS LISTED THERE ON PAGES 7 AND 8 ACTUALLY FILLED IN;
11:55AM 14 CORRECT?
11:55AM 15 A. YES, IT DOES.
11:55AM 16 Q. WITH THE REFERENCE RANGES?
11:55AM 17 A. THAT'S CORRECT.
11:55AM 18 Q. OKAY. AND WHEN YOU GOT BACK -- YOU ACTUALLY ARE MARRIED
11:55AM 19 TO A NURSE PRACTITIONER; RIGHT?
11:55AM 20 A. I AM.
11:55AM 21 Q. AND HER NAME IS SAGE?
11:55AM 22 A. THAT'S CORRECT.
11:55AM 23 Q. AND YOU AND YOUR WIFE LOOKED AT THE RESULTS TOGETHER;
11:56AM 24 RIGHT?
11:56AM 25 A. WE DID.

11:56AM 1 MR. SCHENK: OBJECTION. 702 AND RELEVANCE.

11:56AM 2 THE COURT: I'LL ALLOW THAT ANSWER TO REMAIN.

11:56AM 3 MR. COOPERSMITH: OKAY. THANK YOU, YOUR HONOR.

11:56AM 4 Q. SO YOU LOOKED AT THE RESULTS, AND MR. JHAVERI, YOU HAD

11:56AM 5 OBTAINED OTHER RESULTS FROM A DIFFERENT LAB FOR MANY OF THE

11:56AM 6 SAME BLOOD TESTS; RIGHT?

11:56AM 7 A. I HAD HAD -- I HAD MY ANNUAL PHYSICAL, AND THAT'S WHEN I

11:56AM 8 HAD MY TEST DONE.

11:56AM 9 Q. RIGHT. AND I THINK YOU GOT THOSE OTHER RESULTS FROM A LAB

11:56AM 10 CALLED QUEST?

11:56AM 11 A. I DON'T REMEMBER WHO THEY WERE FROM, BUT THE PROVIDER THAT

11:56AM 12 WE GO TO TAKES THOSE LABS.

11:56AM 13 Q. OKAY. AND YOU, WHEN YOU SAW THE THERANOS RESULTS, SAW

11:56AM 14 THAT THE ASSAYS, THE RESULTS THAT THERANOS REPORTED WERE

11:56AM 15 IDENTICAL TO THE LAB TESTS THAT YOU HAD AT THE OTHER LAB;

11:56AM 16 CORRECT?

11:56AM 17 A. THEY WERE.

11:56AM 18 Q. OKAY. EVERY SINGLE ONE?

11:56AM 19 A. YES.

11:56AM 20 Q. OKAY. AND THERANOS DIDN'T -- TO YOUR KNOWLEDGE, THERANOS

11:57AM 21 DIDN'T HAVE ANY INFORMATION ABOUT WHAT YOUR RESULTS WERE FROM

11:57AM 22 YOUR OTHER LAB THAT YOU HAD FROM YOUR ANNUAL CHECKUP, DID

11:57AM 23 THEY?

11:57AM 24 A. I DON'T BELIEVE SO.

11:57AM 25 Q. YOU DIDN'T PROVIDE THERANOS WITH YOUR TESTING FROM THE

11:57AM 1 OTHER CHECKUP OR ANYTHING LIKE THAT; RIGHT?

11:57AM 2 A. I DID NOT.

11:57AM 3 Q. OKAY. MR. JHAVERI, DURING YOUR DIRECT EXAMINATION BY

11:57AM 4 MR. SCHENK, YOU WERE SHOWN A NUMBER OF TEXT MESSAGES BY

11:57AM 5 MR. BALWANI AND MS. HOLMES.

11:57AM 6 DO YOU REMEMBER THAT?

11:57AM 7 A. YES, SIR.

11:57AM 8 Q. AND OBVIOUSLY YOU WERE NOT PART OF THOSE TEXT MESSAGES;

11:57AM 9 RIGHT?

11:57AM 10 A. I WAS NOT.

11:57AM 11 Q. AND YOU WEREN'T -- YOU DON'T KNOW, DO YOU, LIKE, EXACTLY

11:57AM 12 THE CONTEXT OF WHAT THEY WERE TALKING ABOUT IN ALL CASES;

11:57AM 13 RIGHT?

11:57AM 14 A. NOT IN ALL CASES. BUT IN SOME CASES I COULD SORT OF

11:57AM 15 EXTRACT WHAT THEY WERE TALKING ABOUT BASED ON WHAT WAS

11:57AM 16 HAPPENING WITH THE PARTNERSHIP.

11:57AM 17 Q. SO YOU COULD INTERPRET SOME OF THAT?

11:57AM 18 A. SURE.

11:57AM 19 Q. BASED ON THE INFORMATION THAT YOU HAD; RIGHT?

11:57AM 20 A. CORRECT.

11:57AM 21 Q. BUT YOU WEREN'T PART OF THOSE TEXT MESSAGES?

11:58AM 22 A. I WAS NOT PART OF THOSE TEXT MESSAGES.

11:58AM 23 Q. SO YOU DON'T KNOW WHAT OTHER COMMUNICATIONS WERE IN AND

11:58AM 24 AROUND THOSE THINGS THAT MR. SCHENK SHOWED YOU; RIGHT?

11:58AM 25 A. I DO NOT.

11:58AM 1 Q. OKAY. LET'S GO TO EXHIBIT 7660.

11:58AM 2 A. I HAVE IT.

11:58AM 3 Q. AND THAT'S AN ARTICLE FROM "THE ECONOMIST"?

11:58AM 4 A. YES.

11:58AM 5 Q. FROM APRIL OF 2016?

11:58AM 6 A. CORRECT.

11:58AM 7 Q. OKAY. SO, MR. JHAVERI, IN JUNE OF 2015, YOU BELIEVED IF

11:59AM 8 THERE WAS A PROBLEM WITH THE THERANOS RESULTS, YOU WOULD HAVE

11:59AM 9 HEARD IT; RIGHT?

11:59AM 10 A. BASED ON MY STATEMENT, YES.

11:59AM 11 IF I CAN CLARIFY?

11:59AM 12 Q. WELL, NO. I JUST WANT TO ASK THE QUESTIONS. YOU MIGHT

11:59AM 13 HAVE A CHANCE TO CLARIFY LATER.

11:59AM 14 YOU BELIEVED, AND YOU GAVE A QUOTE, THAT IF THE RESULTS

11:59AM 15 WERE NOT THERE AT THERANOS, YOU WOULD HAVE HEARD IT?

11:59AM 16 A. CORRECT.

11:59AM 17 Q. OKAY. AND THEN IN ADDITION, YOU ALSO SAID AT THE TIME

11:59AM 18 THAT WALGREENS CHIEF MEDICAL OFFICER HAD REVIEWED THE

11:59AM 19 TECHNOLOGY AND THE DATA BEFORE IT INTRODUCED THE SERVICE;

11:59AM 20 CORRECT?

11:59AM 21 A. CORRECT.

11:59AM 22 Q. THAT WAS YOUR STATEMENT?

11:59AM 23 A. WAS IT IN THE ARTICLE?

11:59AM 24 Q. PAGE 3, TOP.

11:59AM 25 MR. SCHENK: OBJECTION. RELEVANCE. IT'S A PRIOR

11:59AM 1 INCONSISTENT STATEMENT THAT COUNSEL IS TRYING TO ADMIT.

12:00PM 2 THE COURT: COUNSEL?

12:00PM 3 MR. COOPERSMITH: YOU KNOW, I'M GOING TO ASK A

12:00PM 4 DIFFERENT QUESTION, YOUR HONOR.

12:00PM 5 Q. MR. JHAVERI, APART FROM THE ARTICLE, YOU ACTUALLY SAID

12:00PM 6 THAT THE CHIEF MEDICAL OFFICER OF WALGREENS HAD REVIEWED

12:00PM 7 THERANOS TECHNOLOGY BEFORE IT INTRODUCED THE SERVICE; CORRECT?

12:00PM 8 A. CORRECT.

12:00PM 9 Q. OKAY.

12:00PM 10 MAY I HAVE A MOMENT, YOUR HONOR?

12:00PM 11 THE COURT: YES.

12:00PM 12 (DISCUSSION AMONGST DEFENSE COUNSEL OFF THE RECORD.)

12:01PM 13 MR. COOPERSMITH: YOUR HONOR, I THANK YOU FOR THE

12:01PM 14 COURT'S INDULGENCE.

12:01PM 15 I HAVE NO FURTHER QUESTIONS ON CROSS AT THIS TIME.

12:01PM 16 I ONLY WOULD MENTION WE DID WANT TO RESERVE A FURTHER

12:01PM 17 DISCUSSION WITH THE COURT ABOUT EXHIBIT 20618, WHICH DID NOT

12:01PM 18 COME INTO EVIDENCE.

12:01PM 19 MAYBE WE CAN DO THAT AT A CONVENIENT TIME FOR THE COURT

12:01PM 20 AND PERHAPS REVISIT THAT, EVEN IF IT ENDS UP BEYOND THE

12:01PM 21 SCOPE OF MR. SCHENK'S REDIRECT, IF HE HAS ANY.

12:01PM 22 THE COURT: ALL RIGHT. THANK YOU.

12:01PM 23 MR. COOPERSMITH: OKAY. SIT DOWN?

12:01PM 24 (LAUGHTER.)

12:01PM 25 MR. COOPERSMITH: I GOT IT.

12:01PM 1 THE COURT: MR. SCHENK, DO YOU HAVE REDIRECT?

12:01PM 2 MR. SCHENK: YES, I DO.

12:01PM 3 THE COURT: AND SHOULD WE START THAT NOW OR SHOULD

12:02PM 4 WE TAKE OUR BREAK NOW?

12:02PM 5 MR. SCHENK: WHATEVER THE COURT'S PREFERENCE IS. A

12:02PM 6 BREAK NOW WOULD BE GREAT.

12:02PM 7 THE COURT: OKAY. I TOLD THE JURY WE WOULD TAKE

12:02PM 8 30 MINUTES, BUT IT'S BEEN 15.

12:02PM 9 SO THANK YOU, MR. COOPERSMITH, FOR COMING IN UNDER, UNDER

12:02PM 10 ESTIMATE. I APPRECIATE THAT.

12:02PM 11 (LAUGHTER.)

12:02PM 12 THE COURT: LET'S TAKE OUR LUNCH BREAK NOW, LADIES

12:02PM 13 AND GENTLEMEN. WE'LL TAKE 30 MINUTES, 30 MINUTES, AND THEN

12:02PM 14 WE'LL COME BACK AND RESUME.

12:02PM 15 YOU CAN STAND DOWN, SIR.

12:02PM 16 THE WITNESS: THANK YOU.

12:02PM 17 (JURY OUT AT 12:02 P.M.)

12:02PM 18 THE COURT: PLEASE BE SEATED. THANK YOU.

12:03PM 19 THE RECORD SHOULD REFLECT THAT OUR JURY HAS LEFT FOR OUR

12:03PM 20 NOON BREAK.

12:03PM 21 OUR WITNESS, MR. JHAVERI, HAS LEFT THE COURTROOM.

12:03PM 22 ALL COUNSEL REMAIN. MR. BALWANI REMAINS.

12:03PM 23 SHOULD WE DISCUSS THIS EXHIBIT? WHAT WAS THE EXHIBIT

12:03PM 24 NUMBER?

12:03PM 25 MR. COOPERSMITH: IT WAS EXHIBIT 20618, YOUR HONOR.

12:03PM 1 THE COURT: YES. YES.

12:03PM 2 AND YOU WOULD LIKE TO ADMIT THAT.

12:03PM 3 MR. SCHENK, DO YOU WANT TO BE HEARD ON THIS?

12:03PM 4 MR. SCHENK: YES. THANK YOU VERY MUCH, YOUR HONOR.

12:03PM 5 YOUR HONOR, THERE'S NO REASON TO ADMIT A 2,000 PAGE

12:03PM 6 SPREADSHEET WHEN THE VERY NEXT EXHIBIT, I THINK IT WAS 20247,

12:03PM 7 CONTAINED WHAT MR. JHAVERI TESTIFIED WAS SOME INFORMATION FROM

12:03PM 8 THAT SPREADSHEET.

12:03PM 9 AND MR. COOPERSMITH ASKED ZERO QUESTIONS ABOUT THAT

12:03PM 10 PORTION OF THE EXHIBIT.

12:04PM 11 IT IS NOT NECESSARY. FOR WHATEVER POINT THAT

12:04PM 12 MR. COOPERSMITH IS TRYING TO MAKE THROUGH THAT DOCUMENT, I

12:04PM 13 THINK HE'S ABLE TO MAKE THROUGH THE QUESTIONS THAT HE ASKED

12:04PM 14 MR. JHAVERI.

12:04PM 15 BUT TO ADMIT THAT SPREADSHEET IS UNNECESSARY. IT SEEMS

12:04PM 16 QUITE VOLUMINOUS, AND IT DOES NOT HAVE ANY ADDITIONAL RELEVANCE

12:04PM 17 THAT THE QUESTIONS THAT MR. COOPERSMITH ASKED WERE UNABLE TO

12:04PM 18 ACHIEVE.

12:04PM 19 WE HAVE ADDITIONAL QUESTIONS ABOUT FOUNDATION, THE

12:04PM 20 SPECULATION THAT WAS REQUIRED BY MR. JHAVERI, IN FACT,

12:04PM 21 ACCEPTING THE TRUTH OF SOME META DATA THAT MR. COOPERSMITH

12:04PM 22 TESTIFIED SHOWED THAT I THINK HIS NAME WAS BURKE CREATED THE

12:04PM 23 DOCUMENT, THAT S.B. MEANT SUNNY BALWANI, THERE WERE A LOT OF

12:04PM 24 ASSUMPTIONS NECESSARY ON THE FOUNDATION SIDE OF THE DOCUMENT.

12:04PM 25 BUT I'M NOT SURE THAT THE COURT EVEN NEEDS TO GET TO THAT

12:04PM 1 PORTION OF THE ANALYSIS.

12:04PM 2 I THINK THE COURT SAW THE LIMITED PROBATIVE VALUE OF THIS

12:04PM 3 SPREADSHEET BY THE FAILURE TO USE THE CONTENT OF THE

12:05PM 4 SPREADSHEET IN THE VERY NEXT EXHIBIT.

12:05PM 5 THE COURT: ALL RIGHT. THANK YOU.

12:05PM 6 MR. COOPERSMITH.

12:05PM 7 MR. COOPERSMITH: THANK YOU, YOUR HONOR.

12:05PM 8 SO, FIRST OF ALL, THE COMPARISON WITH THE NEXT EXHIBIT IS

12:05PM 9 APPLES AND, I DON'T KNOW, GRAPEFRUITS OR SOMETHING.

12:05PM 10 SO THE SPREADSHEET, WHICH IS THE LONG SPREADSHEET, IS WHAT

12:05PM 11 IT IS. IT'S 2,000 PAGES IF IT WAS PRESENTED.

12:05PM 12 THAT HAS A LOT OF DEMOGRAPHIC INFORMATION OF EVERY SINGLE

12:05PM 13 WALGREENS STORE, WHICH MR. JHAVERI SAID IS CONFIDENTIAL

12:05PM 14 WALGREENS INFORMATION, BUT WE HAVE IT IN THIS TRIAL.

12:05PM 15 AND THE OTHER SPREADSHEET, WHICH WAS JUST A LITTLE EXCERPT

12:05PM 16 WHICH DIDN'T CONTAIN ANYTHING CONFIDENTIAL, THAT HAS JUST

12:05PM 17 BASICALLY A STORE, ADDRESS, AND A ZIP CODE, AND IT'S A SMALL

12:05PM 18 SUBSET OF THAT.

12:05PM 19 AND THE LONGER EXHIBIT -- AND WE HAVE AN ELECTRONIC FORM.

12:05PM 20 I'M NOT PLANNING TO HAVE ANYONE TOTE AROUND 2,000 PAGES, BUT WE

12:06PM 21 HAVE IT IN ELECTRONIC FORM.

12:06PM 22 WHAT IT DOES IS IT SHOWS THAT -- ONE OF THE GOVERNMENT'S

12:06PM 23 THEMES HERE HAS BEEN THAT THE WALGREENS PARTNERSHIP WITH

12:06PM 24 THERANOS BASICALLY DIED IN THE SUMMER OF 2014, AROUND AUGUST.

12:06PM 25 AND, IN FACT, WHAT THIS EXHIBIT SHOWS IS EVEN AS LATE AS

12:06PM 1 MAY 2015, WALGREENS IS SENDING THIS CONFIDENTIAL PROPRIETARY
12:06PM 2 DATA FOR 8,000 STORES TO THERANOS SO THAT THERANOS CAN GO ABOUT
12:06PM 3 SELECTING HOW THEY'RE GOING TO BUILD OUT WITH WALGREENS, YOU
12:06PM 4 KNOW, THE NEXT TRANCHE OF STORES.
12:06PM 5 SO I THINK THAT THIS IS RELEVANT TO WHAT THE GOVERNMENT
12:06PM 6 HAS PUT FORWARD IN THIS CASE.
12:06PM 7 I APOLOGIZE TO THE COURT THAT IT'S LONG, BUT OBVIOUSLY I
12:06PM 8 DIDN'T CREATE IT. WE THINK IT'S RELEVANT FOR THAT PURPOSE.
12:06PM 9 I THINK WE WANT TO PUT THIS INTO EVIDENCE SO THAT AT
12:06PM 10 CLOSING ARGUMENT WE CAN SHOW EXACTLY HOW CLOSE THIS
12:06PM 11 RELATIONSHIP WAS AND HOW WALGREENS WAS COMMUNICATING WITH
12:06PM 12 THERANOS, THEIR TRUSTED PARTNER AT THE TIME, ALL OF THIS HIGHLY
12:07PM 13 SENSITIVE DATA SO THAT THERANOS COULD GO ABOUT BUILDING STORES.
12:07PM 14 THE GOVERNMENT'S CASE IS GOING TO BE, AS I UNDERSTAND IT,
12:07PM 15 THAT MR. BALWANI WAS NOT STRAIGHT WITH THE INVESTORS IN THE
12:07PM 16 FALL OF 2014 ABOUT THE NATURE OF THIS RELATIONSHIP AND ITS
12:07PM 17 PROSPECTS FOR EXPANSION.
12:07PM 18 SO I THINK IT'S A RELEVANT EXHIBIT.
12:07PM 19 I THINK IN TERMS OF THE AUTHENTICITY AND FOUNDATION, I
12:07PM 20 DON'T THINK THOSE ARE SERIOUS OBJECTIONS. I THINK, FRANKLY,
12:07PM 21 THE GOVERNMENT ITSELF HAS SHOWN META DATA IN THE VERY SAME FORM
12:07PM 22 IN THIS TRIAL --
12:07PM 23 THE COURT: WELL, LET'S TALK ABOUT THIS ONE.
12:07PM 24 MR. COOPERSMITH: SURE, YOUR HONOR.
12:07PM 25 THE COURT: THIS ONE, YOU ASKED THE WITNESS ABOUT

12:07PM 1 THE INITIALS S.B. THE INITIALS S.B. APPEAR ON AT LEAST THE
12:07PM 2 PAGE YOU SHOWED, AND IT SAID MODIFIED BY. AND I THINK YOU
12:07PM 3 SEEMED TO SUGGEST WITH YOUR QUESTION THAT THAT WAS YOUR CLIENT
12:07PM 4 THAT DID THAT, ALTHOUGH THIS WITNESS HAD NO KNOWLEDGE OF THAT.
12:07PM 5 MR. COOPERSMITH: NO.
12:07PM 6 THE COURT: SO ARE THERE SOME AUTHENTICATION ISSUES
12:07PM 7 REGARDING THAT?
12:07PM 8 MR. COOPERSMITH: YEAH. THANK YOU, YOUR HONOR.
12:07PM 9 I DON'T THINK SO. I AGREE WITH YOUR HONOR THAT THE
12:08PM 10 INITIALS S.B., THEY DO HAPPEN TO BE THE INITIALS OF
12:08PM 11 SUNNY BALWANI, BUT THERE ARE MANY OTHER PEOPLE IN THE WORLD
12:08PM 12 WITH THE INITIALS S.B.
12:08PM 13 BUT HE DID RECOGNIZE THE NAME, IN RESPONSE TO MY
12:08PM 14 QUESTIONS, OF JASON BURKE, AND JASON BURKE HE DID RECOGNIZE AS
12:08PM 15 A PERSON AT WALGREENS WHO DEALS WITH THIS TYPE OF DATA.
12:08PM 16 THE COURT: REMIND ME. DID HE SAY THAT HE KNOWS
12:08PM 17 THAT JASON BURKE PREPARED THIS?
12:08PM 18 MR. COOPERSMITH: HE KNOWS THAT JASON BURKE HAD
12:08PM 19 ACCESS TO THE DATA AND WAS WORKING WITH THERANOS. THAT'S OUR
12:08PM 20 MEMORY OF THE TESTIMONY.
12:08PM 21 THE COURT: MY QUESTION IS, DID HE TESTIFY THAT HE
12:08PM 22 KNEW THAT JASON BURKE PREPARED THE DOCUMENT?
12:08PM 23 MR. COOPERSMITH: THAT'S THE WAY I HEARD IT.
12:08PM 24 WELL, PREPARED THE DOCUMENT? I DON'T THINK HE SAID HIS
12:08PM 25 JOB WAS TO PREPARE SPREADSHEETS. HIS JOB IS TO ASSEMBLE

12:08PM 1 DEMOGRAPHIC INFORMATION, AND IN THE COURSE OF THAT JOB, HE HAS
12:08PM 2 ACCESS TO THE DATABASE, HE TESTIFIED, THAT WOULD CONTAIN ALL OF
12:08PM 3 THIS.

12:08PM 4 THE COURT: I DIDN'T ASK THAT APPROPRIATELY.

12:08PM 5 DID HE TESTIFY THAT HE HAS KNOWLEDGE THAT JASON BURKE
12:08PM 6 CREATED, PREPARED, OR SOMEHOW HAD SOMETHING TO DO WITH THIS
12:08PM 7 DOCUMENT?

12:08PM 8 MR. COOPERSMITH: THAT'S WHAT I HEARD, YOUR HONOR.

12:08PM 9 AND NOT ONLY THAT, BUT IN THAT META DATA -- AND OBVIOUSLY
12:09PM 10 IF MR. SCHENK HAS SOME EVIDENCE THAT IT'S NOT AUTHENTIC, HE CAN
12:09PM 11 INTRODUCE THAT EVIDENCE.

12:09PM 12 BUT IN THE META DATA THAT WE SHOWED THE WITNESS, AND THE
12:09PM 13 GOVERNMENT, AND THE COURT, IT HAS AUTHORED BY, CREATED BY
12:09PM 14 JASON BURKE, WHO HE RECOGNIZED, AND IT HAS THIS CONFIDENTIAL
12:09PM 15 DATA, SO WHERE ELSE WOULD IT HAVE COME FROM?

12:09PM 16 WE THINK IT'S AUTHENTIC, WE THINK IT'S ADMISSIBLE, AND WE
12:09PM 17 THINK IT'S RELEVANT.

12:09PM 18 THE COURT: CAN YOU ACCOMPLISH WHAT YOU SEEK TO
12:09PM 19 ACCOMPLISH WITHOUT INTRODUCING THIS CUMULATIVE INFORMATION?

12:09PM 20 MY SENSE IS MANY OF THE STORES THAT ARE LISTED IN THESE
12:09PM 21 2,000 PAGES WERE NOT PART OF THE ADDITIONAL OUTREACH.

12:09PM 22 YOU SEEK TO PUT THIS IN TO SAY THERE WAS STILL A
12:09PM 23 RELATIONSHIP SUCH THAT CONFIDENTIAL INFORMATION WAS BEING
12:09PM 24 EXCHANGED SO THEY COULD FORECAST WHAT IS NEXT, WHAT STORES ARE
12:09PM 25 NEXT? IS THAT THE PURPOSE?

12:09PM 1 MR. COOPERSMITH: YOUR HONOR, I THINK IT'S GOING TO
12:09PM 2 BE A JURY QUESTION AS TO WHAT ALL OF THIS MEANS AND WHAT
12:10PM 3 EXACTLY THE EXPANSION PLANS WERE OR WEREN'T. I THINK THAT'S A
12:10PM 4 JURY QUESTION.
12:10PM 5 BUT FROM OUR STANDPOINT FOR NOW, WE DO WANT TO MAKE SURE
12:10PM 6 THAT THE JURY UNDERSTANDS THE TYPE OF DATA WALGREENS WAS
12:10PM 7 COMMUNICATING.
12:10PM 8 IS THERE ANOTHER WAY TO DO IT?
12:10PM 9 I'M CERTAINLY OPEN TO OTHER WAYS THAT MIGHT BE EFFICIENT.
12:10PM 10 SO, FOR EXAMPLE, YOUR HONOR, IF I WAS ABLE TO ASK
12:10PM 11 QUESTIONS ABOUT WHAT THE DIFFERENT FIELDS WERE AND HOW MANY
12:10PM 12 STORES THERE WERE, THAT MIGHT ACCOMPLISH IT WITHOUT ADMITTING
12:10PM 13 THE EXHIBIT, I'LL GRANT THAT.
12:10PM 14 THE COURT: WELL, IS THE POINT -- CAN THIS WITNESS
12:10PM 15 TESTIFY THAT THERE WAS INFORMATION THAT WAS EXCHANGED THAT
12:10PM 16 RELATED TO ADDITIONAL STORES THAT SUGGESTS THERE WAS STILL A
12:10PM 17 CONVERSATION GOING ON ABOUT BUILDING THAT?
12:10PM 18 ISN'T THAT THE INFORMATION THAT YOU WANT?
12:10PM 19 MR. COOPERSMITH: YEAH, HE CAN, AND I THINK HE DID
12:10PM 20 SAY THAT.
12:10PM 21 BUT I ALSO WOULD LIKE TO MAKE SURE THAT IT'S CLEAR EXACTLY
12:10PM 22 WHAT TYPE OF INFORMATION IS BEING TRANSMITTED, BECAUSE IT'S AT
12:10PM 23 LEAST IMPORTANT TO US THAT THE JURY UNDERSTANDS THIS IS THIS
12:11PM 24 CROWN JEWELS, YOU KNOW, HIGHLY SENSITIVE INFORMATION.
12:11PM 25 THE COURT: RIGHT. SO IT'S CONFIDENTIAL INFORMATION

12:11PM 1 ABOUT STORES, LOCATIONS, INGRESS, EGRESS, EBIT INFORMATION, ALL
12:11PM 2 OF THAT. IT'S CONFIDENTIAL.

12:11PM 3 MR. COOPERSMITH: SURE.

12:11PM 4 THE COURT: AND THAT INFORMATION IS CONTAINED.

12:11PM 5 I THINK YOU CAN ASK THAT QUESTION, I'M NOT SAYING I'M
12:11PM 6 GOING TO PERMIT IT, BUT AS AN ALTERNATIVE TO GETTING THE ENTIRE
12:11PM 7 DOCUMENT IN.

12:11PM 8 SOME OF THE INFORMATION MIGHT NOT BE RELEVANT TO THAT
12:11PM 9 POINT.

12:11PM 10 MR. SCHENK.

12:11PM 11 MR. SCHENK: YOUR HONOR, MR. COOPERSMITH IS ARGUING
12:11PM 12 TO THE COURT THAT THIS DOCUMENT IS SOMETHING THAT IT IS NOT.

12:11PM 13 IMAGINE AN EMAIL BEING SENT FROM WALGREENS TO THERANOS
12:11PM 14 WITH THIS AS AN ATTACHMENT.

12:11PM 15 WE COULD EXCLUDE THE ATTACHMENT AND SAY THE CONTENT IS
12:11PM 16 UNNECESSARY.

12:11PM 17 THE POINT HE WANTS TO MAKE IS THAT THIS INFORMATION WAS
12:11PM 18 SHARED.

12:11PM 19 AND THEN WE WOULD BE IN A WORLD WHERE WE LEAVE OUT THE
12:11PM 20 ATTACHMENT AND WE ADMIT THE EMAIL.

12:11PM 21 WHAT MR. COOPERSMITH IS DOING, THOUGH, WITH 20618 IS JUST
12:11PM 22 TRYING TO PUT THE EXCEL SPREADSHEET IN FRONT OF THE WITNESS,
12:12PM 23 NOT MR. BURKE, A DIFFERENT WITNESS, AND SAY, IS THIS THE KIND
12:12PM 24 OF INFORMATION THAT SOME OTHER EMPLOYEE AT THERANOS -- AT
12:12PM 25 WALGREENS HAD ACCESS TO, AND IS IT CONFIDENTIAL INFORMATION?

12:12PM 1 BUT THIS WITNESS CANNOT PROVIDE THE TESTIMONY THAT ON A
12:12PM 2 CERTAIN DATE THIS SPREADSHEET WAS SHARED WITH THERANOS OR THAT
12:12PM 3 HE CAN DESCRIBE THE GATHERING PROCESS, THE DATA COLLECTION
12:12PM 4 PROCESS.

12:12PM 5 SO WHAT YOU'VE NOW HEARD AS THE BASIS TO ADMIT IT, IN
12:12PM 6 FACT, IS NOT ON ALL FOURS WITH WHAT THIS DOCUMENT IS, AND
12:12PM 7 BECAUSE IT ISN'T, WE'RE IN THIS POSITION WHERE WE HAVE TO
12:12PM 8 DECIDE WHETHER THE SPREADSHEET COMES IN OR THE SPREADSHEET
12:12PM 9 DOESN'T COME IN.

12:12PM 10 ORDINARILY WE COULD ADMIT THE EMAIL AND EXCLUDE THE
12:12PM 11 SPREADSHEET.

12:12PM 12 THE COURT: WELL, THAT'S WHAT I WAS TRYING TO PROBE.

12:12PM 13 DO YOU HAVE SOMETHING ELSE, MR. COOPERSMITH?

12:12PM 14 MR. COOPERSMITH: ON THIS TOPIC?

12:12PM 15 WELL, SO, YOUR HONOR, THERE IS NOT AN EMAIL THAT I'M AWARE
12:12PM 16 OF, BUT THAT'S SOMETIMES THE WAY IT GOES.

12:12PM 17 WHAT -- FIRST OF ALL, MR. JHAVERI, I BELIEVE -- I'M NOT
12:13PM 18 SURE I ASKED HIM THIS EXACT QUESTION, BUT I BELIEVE HE WOULD
12:13PM 19 SAY, IF I ASKED HIM, THAT THIS WAS A DATABASE -- IN FACT, HE
12:13PM 20 DID SAY THIS, IT IS DATABASE INFORMATION WITHIN WALGREENS, AND
12:13PM 21 IT'S KEPT IN THE ORDINARY COURSE OF BUSINESS.

12:13PM 22 SO CERTAINLY THE WHOLE SPREADSHEET WITH ALL OF THE
12:13PM 23 DEMOGRAPHICS WITH ABOUT 8,000 STORES, ALL OF THAT DATA IS
12:13PM 24 BUSINESS RECORDS OF WALGREENS.

12:13PM 25 I DON'T THINK THERE COULD BE ANY DISPUTE ABOUT THAT.

12:13PM 1 AS TO WHETHER IT WAS TRANSMITTED, WHAT WE SEE, AND HERE IS
12:13PM 2 THE INDICIA, HE, I THINK, HAS TESTIFIED THAT THIS IS
12:13PM 3 INFORMATION THAT THEY WERE SHARING WITH THERANOS FOR THE
12:13PM 4 PURPOSE OF THERANOS PICKING STORES.

12:13PM 5 THE COURT: DID HE SAY THAT ABOUT THIS DOCUMENT?

12:13PM 6 MR. COOPERSMITH: THAT'S WHAT I RECALL, YOUR HONOR.
12:13PM 7 I DON'T HAVE A PHOTOGRAPHIC MEMORY, BUT THAT'S WHAT I HEARD IN
12:13PM 8 THE TESTIMONY.

12:13PM 9 AND THEN IN ADDITION, YOUR HONOR, I KNOW THAT IT'S ONLY
12:13PM 10 EMAILS IN PARTICULAR THAT ARE WITHIN THE PARTIES' STIPULATION
12:13PM 11 IN TERMS OF BATES NUMBERS, BUT THIS ONE DOES HAVE THESE TS
12:13PM 12 BATES NUMBERS, WE'RE SHOWING A NATIVE VERSION, BUT THE DOCUMENT
12:14PM 13 IS THAT WAY.

12:14PM 14 AND SO I DON'T REALLY THINK THAT THERE IS ANY SERIOUS
12:14PM 15 AUTHENTICITY ISSUE, INCLUDING BECAUSE OF THE META DATA, AND
12:14PM 16 WHAT MR. JHAVERI IDENTIFIED.

12:14PM 17 I THINK WHAT MR. SCHENK SEEMS TO BE OBJECTING TO, WHAT I'M
12:14PM 18 HEARING IS NOT THAT WE'RE DISPUTING THAT THIS IS REAL DATA FROM
12:14PM 19 WALGREENS, BUT HE'S TRYING TO CHALLENGE THE IDEA THAT IT WENT
12:14PM 20 TO THERANOS.

12:14PM 21 BUT I THINK MR. JHAVERI ALREADY SAID THAT THIS WAS DATA
12:14PM 22 THAT THEY WERE SHARING WITH THERANOS FOR THE PURPOSE OF THIS
12:14PM 23 PARTNERSHIP SO THEY COULD PICK STORES, AND IF I NEED TO CLARIFY
12:14PM 24 THAT WITH MR. JHAVERI, I CAN CERTAINLY ASK QUESTIONS.

12:14PM 25 I DON'T UNDERSTAND WHY THIS DOCUMENT IS NOT ADMISSIBLE

12:14PM 1 BASED ON ALL OF THE THINGS THAT I HAVE JUST DESCRIBED TO THE
12:14PM 2 COURT.

12:14PM 3 THE COURT: OKAY.

12:14PM 4 MR. SCHENK: YOUR HONOR, MR. JHAVERI -- MY
12:14PM 5 RECOLLECTION IS THAT MR. JHAVERI TESTIFIED ABOUT WALGREENS'S
12:14PM 6 USE OF THIS DATA FOR SOMETHING I THINK HE SAID WAS MARKET
12:14PM 7 PLANNING PURPOSES.

12:14PM 8 AND WHETHER MR. JHAVERI CAN SAY THAT THIS INFORMATION IN
12:15PM 9 THE SPREADSHEET WAS COMMUNICATED TO THERANOS FOR STORE
12:15PM 10 SELECTION PURPOSES, I DON'T KNOW IF THAT TESTIMONY ALREADY
12:15PM 11 HAPPENED OR IF THAT WAS SOMETHING THAT MR. JHAVERI COULD
12:15PM 12 PROVIDE, BUT THE POINT IS THAT THAT IS THE ONLY THING THAT
12:15PM 13 WOULD BE RELEVANT. THAT'S THE EMAIL. THIS IS THE ATTACHMENT.

12:15PM 14 THERE IS NO NEED TO INCLUDE THIS TYPE OF INFORMATION WHEN
12:15PM 15 I THINK THE POINT IS CORRECT, AND THAT IS, THIS TYPE OF
12:15PM 16 INFORMATION APPEARED IN THE VERY NEXT EXHIBIT, AND THE DEFENSE
12:15PM 17 ASKED NO QUESTIONS ABOUT IT.

12:15PM 18 THE SPECIFIC CELLS AND THE DATA WITHIN THE CELLS IS NOT
12:15PM 19 RELEVANT IN THE TRIAL.

12:15PM 20 EVEN AS MR. COOPERSMITH IS NOW ARGUING IT TO THE COURT,
12:15PM 21 HE'S SAYING IT'S THE TRANSMISSION OF IT THAT MATTERS, SO THEN
12:15PM 22 WE SHOULD KNOW THINGS ABOUT THE DATE IT WAS TRANSMITTED AND BY
12:15PM 23 WHOM.

12:15PM 24 WE DON'T HAVE THAT INFORMATION, BECAUSE ALL WE HAVE IS THE
12:15PM 25 SPREADSHEET.

12:15PM 1 SO THE RELEVANT BASIS THAT MR. COOPERSMITH IS ADVOCATING
12:15PM 2 IS FOR AN EMAIL THAT DOESN'T EXIST, OR AT LEAST HASN'T BEEN
12:15PM 3 PROFFERED.
12:16PM 4 IT'S NOW BEING USED OR BEING APPLIED TO A SPREADSHEET THAT
12:16PM 5 IT ACTUALLY DOESN'T SUPPORT, AND THAT'S WHY THIS DOCUMENT
12:16PM 6 SHOULD NOT BE ADMITTED, BECAUSE THIS DOCUMENT DOES NOT SUPPORT
12:16PM 7 THE RELEVANT BASES THAT MR. COOPERSMITH PROVIDED.
12:16PM 8 THE COURT: THIS IS WHAT I WAS TALKING ABOUT
12:16PM 9 EARLIER -- THANK YOU, MR. SCHENK -- EARLIER ABOUT WHETHER OR
12:16PM 10 NOT THIS WITNESS CAN TESTIFY ABOUT WAS INFORMATION EXCHANGED
12:16PM 11 WITH YOUR CLIENT AND THE COMPANY WHILE THIS WAS ONGOING.
12:16PM 12 AND IF HE CAN TESTIFY ABOUT THAT TO HIS KNOWLEDGE, I'LL
12:16PM 13 ALLOW HIM TO TESTIFY ABOUT IT.
12:16PM 14 BUT GETTING THIS DOCUMENT IN, I DON'T THINK IT
12:16PM 15 ACCOMPLISHES THAT.
12:16PM 16 IF HE WERE TO SAY, OH, YES, WE CONTINUED TO SHARE THIS AND
12:16PM 17 THE INFORMATION WAS TO FORECAST, TO LOOK AND CONTINUE A
12:16PM 18 BUSINESS RELATIONSHIP, THAT'S HIS UNDERSTANDING, THAT'S FINE.
12:16PM 19 BUT THEN -- AND I THINK THE ANALOGY WITH AN EMAIL AND AN
12:16PM 20 ATTACHMENT IS A GOOD ONE HERE. THIS IS JUST THE ATTACHMENT,
12:17PM 21 AND HE CAN TESTIFY THAT, YES, I KNOW THIS NAME, AND, YES,
12:17PM 22 MR. COOPERSMITH, S.B., SOMEHOW WERE THE INITIALS OF YOUR
12:17PM 23 CLIENT, OR WHATEVER PURPOSE THAT SERVES.
12:17PM 24 BUT CAN HE TESTIFY THAT THIS WAS SENT, THIS DOCUMENT WAS
12:17PM 25 SENT?

12:17PM 1 MR. COOPERSMITH: I THINK IT'S SUFFICIENT,

12:17PM 2 YOUR HONOR, IF HE'S ABLE TO TESTIFY, WHICH I THINK HE DID AND

12:17PM 3 HE CAN, THAT THIS TYPE OF INFORMATION WAS SENT, THAT MR. BURKE

12:17PM 4 IS THE PERSON --

12:17PM 5 THE COURT: WAS SENT? WAS SENT?

12:17PM 6 MR. COOPERSMITH: THAT'S WHAT I HEARD HIM SAY,

12:17PM 7 YOUR HONOR, THAT IT'S BECAUSE THEY HAD THIS RELATIONSHIP, THERE

12:17PM 8 WAS A NONDISCLOSURE AGREEMENT, I ASKED THAT QUESTION, AND THEY

12:17PM 9 NORMALLY WOULDN'T SHARE IT WITH COMPETITORS, BUT THEY WOULD

12:17PM 10 SHARE IT WITH A PARTY LIKE THERANOS WHO IS UNDER AN NDA.

12:17PM 11 HE'S AWARE THAT THEY DID. HE'S AWARE THAT THAT IS

12:17PM 12 MR. BURKE'S JOB.

12:17PM 13 MR. BURKE IS THE PERSON WHO APPEARS TO BE THE AUTHOR OF

12:17PM 14 THE DOCUMENT.

12:17PM 15 I THINK WHAT MR. SCHENK MAY BE GETTING AT IS CAN HE SAY

12:17PM 16 THAT THIS EXACT DOCUMENT, RIGHT, WAS TRANSMITTED ON A CERTAIN

12:18PM 17 DAY TO THERANOS?

12:18PM 18 I DON'T THINK THAT'S REQUIRED FOR ADMISSIBILITY OF THE

12:18PM 19 DOCUMENT GIVEN ALL OF THE OTHER INDICIA THAT WE KNOW THE DATE

12:18PM 20 OF THE CREATION, WE KNOW IT'S AT A RELEVANT TIME, WE KNOW WHO

12:18PM 21 MR. BURKE IS, WE KNOW THIS DATA CAN ONLY COME FROM WALGREENS

12:18PM 22 SECRET DATABASE, WE KNOW THAT THEY SHARE THIS WITH CERTAIN

12:18PM 23 COUNTERPARTIES WHERE THEY HAVE NDA'S, AND HE'S TESTIFIED ALL

12:18PM 24 AROUND THOSE SUBJECTS.

12:18PM 25 SO I DON'T KNOW -- I THINK WE HAVE EVERYTHING WE NEED.

12:18PM 1 AND THE FACT THAT THERE'S NOT AN EMAIL -- IT'S ALWAYS NICE
12:18PM 2 IF THERE'S A COVER EMAIL LAYING OUT EXACTLY WHAT THE ATTACHMENT
12:18PM 3 IS. THAT'S NOT REQUIRED FOR ADMISSIBILITY. THERE'S NO RULE
12:18PM 4 THAT SAYS THAT. THAT OFTEN HAPPENS, BUT IT DIDN'T HAPPEN HERE
12:18PM 5 APPARENTLY, AS FAR AS WE KNOW.

12:18PM 6 SO I THINK IT SHOULD COME IN.

12:18PM 7 AT A MINIMUM, YOUR HONOR, EVEN IF THE COURT IS NOT WILLING
12:18PM 8 TO PERMIT THE DOCUMENT TO COME INTO EVIDENCE, AND I HAD TO SORT
12:18PM 9 OF STOP BECAUSE I DIDN'T WANT TO RUN AFOUL OF THE COURT'S
12:19PM 10 RULINGS, BUT I DO THINK THAT AT A MINIMUM I SHOULD BE ABLE TO
12:19PM 11 ASK A FEW QUESTIONS OF MR. JHAVERI ABOUT THE NATURE OF THE DATA
12:19PM 12 AND THEN TO CLARIFY THAT THIS IS THE TYPE OF DATA THAT THEY
12:19PM 13 WERE SHARING WITH THERANOS IN ORDER FOR THERANOS TO SELECT
12:19PM 14 STORES, AND THAT THE DATE OF THE DOCUMENT IS IN FACT AUTHORED
12:19PM 15 ACCORDING TO THE META DATA ON MAY 14TH, 2015.

12:19PM 16 MR. SCHENK: MR. COOPERSMITH TOLD THE COURT A MOMENT
12:19PM 17 AGO THAT THE DATE THAT MR. JHAVERI, NOT KNOWING THE DATE WHEN
12:19PM 18 THE INFORMATION WAS SHARED, ISN'T RELEVANT.

12:19PM 19 THAT SIMPLY ISN'T TRUE.

12:19PM 20 IF MR. JHAVERI WAS AWARE THAT THIS TYPE OF DATA WAS
12:19PM 21 TRANSMITTED IN, LET'S SAY, 2014, AND THE SPREADSHEET IS IN
12:19PM 22 2015, MR. JHAVERI'S TESTIMONY DOESN'T SUPPORT THE ADMISSION OF
12:19PM 23 THIS DOCUMENT.

12:19PM 24 FURTHERMORE, YOU COULD STILL ADMIT IN THE FORM OF
12:19PM 25 TESTIMONY THE CONCEPT OF THE EMAIL. IN OTHER WORDS,

12:19PM 1 MR. JHAVERI IS SAYING I'M AWARE THAT THIS TYPE OF INFORMATION
12:19PM 2 WAS TRANSMITTED FROM WALGREENS TO THERANOS, IS TESTIMONY THAT
12:19PM 3 THE COURT COULD ALLOW. THAT STILL DOESN'T OPEN THE DOOR TO THE
12:20PM 4 ADMISSION OF THIS PARTICULAR --
12:20PM 5 THE COURT: LET ME STOP YOU. PARDON ME. I THINK
12:20PM 6 I'VE SAID THAT.
12:20PM 7 I'M INCLINED TO ALLOW YOU TO ASK THAT TYPE OF QUESTION
12:20PM 8 WITHOUT ADMITTING THE DOCUMENT. I DON'T THINK THE DOCUMENT IS
12:20PM 9 NECESSARY.
12:20PM 10 I DO THINK THAT THERE ARE SOME ISSUES THAT CREATE 403
12:20PM 11 ISSUES. PARTICULARLY, YOUR EXAMINATION ASKING ABOUT THE
12:20PM 12 LETTERS, THE INITIALS S.B.
12:20PM 13 AND THE JURY HAS HEARD HIS ANSWERS TO THAT. THEY HEARD
12:20PM 14 YOUR QUESTION, AND THEY HEARD THE ANSWER.
12:20PM 15 ADMITTING THE DOCUMENT WITH THAT, I THINK WOULD CAUSE SOME
12:20PM 16 CONFUSION WITH THE JURY. THERE MIGHT BE SUPPOSITION THAT YOUR
12:20PM 17 CLIENT MAY BE PREPARED THIS OR IN SOME WAY HAD A HAND TO IT
12:20PM 18 THAT MIGHT CAUSE A JUROR TO THINK NEGATIVE ABOUT YOUR CLIENT
12:20PM 19 FOR SOME WAY.
12:20PM 20 I JUST, I JUST --
12:20PM 21 MR. COOPERSMITH: YOU KNOW, I APPRECIATE THAT,
12:20PM 22 YOUR HONOR.
12:20PM 23 THE COURT: ALL THINGS ARE POSSIBLE WITH THAT.
12:20PM 24 MR. COOPERSMITH: AND I --
12:20PM 25 THE COURT: AND I DON'T THINK THAT'S FAIR TO YOUR

12:20PM 1 CLIENT TO HAVE THAT UNANSWERED.

12:20PM 2 AND, OF COURSE, YOU KNOW, HE HAS CERTAIN RIGHTS THAT HE

12:21PM 3 DOESN'T HAVE TO TESTIFY ABOUT TO CLEAR UP ANY AMBIGUITY ABOUT

12:21PM 4 THAT. AND I DON'T WANT TO PUT HIM IN A POSITION, NOR YOU, IN A

12:21PM 5 POSITION WHERE YOU FEEL LIKE MAYBE WE HAVE TO PUT TESTIMONY ON

12:21PM 6 ABOUT THAT.

12:21PM 7 THAT'S STRETCHING IT TO THE EXTREME PERHAPS. BUT STILL,

12:21PM 8 PROPHYLACTICALLY, I WANT TO MAKE SURE YOUR CLIENT GETS A FAIR

12:21PM 9 TRIAL. AND I DON'T WANT TO CAUSE JEOPARDY TO THAT FOR HIM IN

12:21PM 10 ANY WAY. THAT'S WHAT 403 IS FOR.

12:21PM 11 SO I DO THINK THAT YOU CAN ACCOMPLISH WHAT YOU SEEK TO

12:21PM 12 ACCOMPLISH WITHOUT INTRODUCTION OF THE DOCUMENT, ASKING

12:21PM 13 MR. JHAVERI QUESTIONS ABOUT INFORMATION THAT MIGHT HAVE BEEN

12:21PM 14 SHARED, CONFIDENTIAL INFORMATION, THE NATURE OF WHEN YOU DO THE

12:21PM 15 STORES, YOU LOOK AT PLANNING, YOU LOOK LOGISTICALLY AT WHERE IS

12:21PM 16 THE BEST LOCATION. DO WE WANT TO PUT A STORE IN THE MIDDLE OF

12:21PM 17 DEATH VALLEY AS OPPOSED TO IN THE MIDDLE OF PALM SPRINGS?

12:21PM 18 WHICH WOULD BE MORE COST EFFECTIVE AND MORE -- PRODUCE BETTER

12:21PM 19 INCOME?

12:21PM 20 THOSE TYPES OF QUESTIONS, PERHAPS HE CAN ANSWER THOSE.

12:22PM 21 AND WAS THIS THE TYPE OF INFORMATION THAT WOULD BE SHARED? DO

12:22PM 22 YOU HAVE KNOWLEDGE THAT THIS WAS SHARED AT THAT PARTICULAR

12:22PM 23 TIME, WITHOUT GETTING INTO THE PARTICULARLY DOCUMENT?

12:22PM 24 AND I'LL PERMIT YOU TO DO THAT, BEFORE YOU DO YOUR CROSS--

12:22PM 25 OR EXCUSE ME, REDIRECT, MR. SCHENK.

12:22PM 1 I'LL ALLOW YOU TO CONTINUE WITH YOUR EXAMINATION.

12:22PM 2 MR. COOPERSMITH: THANK YOU, YOUR HONOR. I

12:22PM 3 UNDERSTAND.

12:22PM 4 THE ONE THING THAT I WOULD LIKE TO KNOW, IF I WOULD BE

12:22PM 5 ALLOWED TO DO, IS THAT -- YES, I CAN CERTAINLY, AS I UNDERSTAND

12:22PM 6 THE COURT'S RULING, I CAN GO OVER THE FACT THAT THERE IS DATA,

12:22PM 7 THERE IS A DOCUMENT. WE'RE NOT GOING TO ADMIT THE DOCUMENT,

12:22PM 8 BUT THAT MR. BURKE HAS ACCESS TO THAT TYPE OF DATA. IT WAS THE

12:22PM 9 TYPE OF DATA THAT WAS SHARED WITH THERANOS. IT HAS CERTAIN

12:22PM 10 DEMOGRAPHIC INFORMATION, ALL OF THAT WITHOUT ADMITTING THE

12:22PM 11 DOCUMENT.

12:22PM 12 BUT I ALSO THINK IT WOULD BE IMPORTANT FOR THE JURY TO

12:22PM 13 KNOW, THAT THIS PARTICULAR DOCUMENT, EVEN WITHOUT ADMITTING IT,

12:22PM 14 HAS A CREATION DATE OF MAY 14TH, 2015, AND HAS A MODIFIED DATE

12:22PM 15 BY A PERSON WITH THE INITIALS S.B. IN AUGUST OF 2015, AND THAT

12:23PM 16 THAT KIND OF CABINS THE TIME.

12:23PM 17 AS TO THE COURT'S CONCERN, OF COURSE I SHARE THE COURT'S

12:23PM 18 CONCERN. WE CERTAINLY WANT A FAIR TRIAL FOR OUR CLIENT.

12:23PM 19 THERE'S NOTHING THAT I'M CONCERNED ABOUT THAT IS UNTOWARD

12:23PM 20 ABOUT MR. BALWANI GETTING A SPREADSHEET FROM WALGREENS IN THIS

12:23PM 21 TIMEFRAME AND WORKING WITH THE SPREADSHEET.

12:23PM 22 SO --

12:23PM 23 THE COURT: YOU'RE NOT A JUROR.

12:23PM 24 MR. COOPERSMITH: WELL, I MEAN, WE HAVE TO MAKE

12:23PM 25 JUDGMENTS EVERY MINUTE ABOUT WHAT JURORS MIGHT OR MIGHT NOT

12:23PM 1 THINK.

12:23PM 2 SO THAT WAS OUR JUDGMENT IN THIS CASE.

12:23PM 3 THE COURT: RIGHT.

12:23PM 4 MR. SCHENK.

12:23PM 5 MR. SCHENK: I WOULD OBJECT TO THAT LAST LINE OF

12:23PM 6 QUESTIONING. I DON'T THINK THERE'S A FOUNDATION FOR THIS

12:23PM 7 WITNESS TO PROVIDE THAT TESTIMONY.

12:23PM 8 IT'S MR. COOPERSMITH TESTIFYING THROUGH THOSE QUESTIONS.

12:23PM 9 THE COURT: I'LL ALLOW YOU TO ASK THE QUESTIONS, BUT

12:23PM 10 ASK HIM THE DATE AND THE CREATOR AND ALL OF THAT. I DON'T

12:23PM 11 THINK THERE'S A FOUNDATION FOR THAT.

12:23PM 12 BUT YOU CAN ASK ABOUT WHETHER OR NOT THIS WAS THE TYPE OF

12:23PM 13 INFORMATION THAT WOULD HAVE BEEN EXCHANGED AND WHETHER OR NOT

12:23PM 14 HE HAS PERSONAL KNOWLEDGE OF THAT EXCHANGE TOOK PLACE BETWEEN

12:24PM 15 WALGREENS AND YOUR CLIENT OR THERANOS AT THIS TIME PERIOD. YOU

12:24PM 16 CAN TIME STAMP THAT, AND LET'S SEE WHAT HE SAYS. HE MAY HAVE

12:24PM 17 PERSONAL KNOWLEDGE, I DON'T KNOW.

12:24PM 18 MR. COOPERSMITH: HE MIGHT, YOUR HONOR. OKAY. I

12:24PM 19 UNDERSTAND. THANK YOU.

12:24PM 20 THE COURT: OKAY. THANK YOU.

12:24PM 21 (RECESS FROM 12:24 P.M. UNTIL 12:49 P.M.)

22

23

24

25

1

AFTERNOON SESSION

2

(COURT CONVENED AT 12:49 P.M.)

12:49PM 3 THE COURT: THANK YOU. PLEASE BE SEATED. WE'RE
12:49PM 4 BACK ON THE RECORD. ALL COUNSEL AND THE PARTIES ARE PRESENT.
12:49PM 5 OUR JURY AND ALTERNATES ARE PRESENT.
12:49PM 6 MR. COOPERSMITH: YOUR HONOR, MR. BALWANI WENT TO
12:49PM 7 THE BATHROOM.

12:49PM 8 THE COURT: OKAY. LET'S WAIT BEFORE WE GO FORWARD.

12:50PM 9 (PAUSE IN PROCEEDINGS.)

12:50PM 10 THE COURT: ALL RIGHT. THANK YOU.

12:50PM 11 MR. BALWANI IS PRESENT.

12:50PM 12 MR. SCHENK, BEFORE YOU BEGIN, MR. COOPERSMITH, YOU HAD
12:50PM 13 SOME QUESTIONS, I THINK, I WANTED TO LET YOU FINISH UP WITH.

12:50PM 14 MR. COOPERSMITH: YOUR HONOR, WE HAVE NOTHING
12:50PM 15 FURTHER.

12:50PM 16 THE COURT: OKAY. THANK YOU.

12:50PM 17 MR. SCHENK.

12:50PM 18 MR. SCHENK: YES. THANK YOU.

12:51PM 19 YOUR HONOR, MAY I APPROACH?

12:51PM 20 THE COURT: YES.

12:51PM 21 MR. SCHENK: (HANDING.)

REDIRECT EXAMINATION

12:51PM 23 BY MR. SCHENK:

12:51PM 24 Q. GOOD AFTERNOON, MR. JHAVERI.

12:51PM 25 A. GOOD AFTERNOON.

12:51PM 1 Q. NICE TO SEE YOU AGAIN.

12:51PM 2 I'VE GIVEN YOU BACK THE BINDER OF GOVERNMENT EXHIBITS THAT

12:51PM 3 YOU AND I TALKED ABOUT A FEW WEEKS AGO WHEN YOU TESTIFIED

12:51PM 4 ORIGINALLY. I MAY ASK YOU SOME QUESTIONS, AND IT WILL BE

12:51PM 5 HELPFUL TO REFER TO THOSE EXHIBITS, SO THEY'RE NOW IN FRONT OF

12:51PM 6 YOU.

12:51PM 7 A. THANK YOU.

12:51PM 8 Q. I'M GOING TO ASK YOU QUESTIONS THAT FOLLOW UP ON

12:51PM 9 CROSS-EXAMINATION QUESTIONS THAT MR. COOPERSMITH ASKED YOU,

12:51PM 10 BOTH FROM THE PORTION OF THE CROSS-EXAMINATION FROM A COUPLE

12:51PM 11 WEEKS AGO, AND ALSO FROM THIS MORNING IF THAT'S OKAY?

12:51PM 12 A. YES.

12:51PM 13 Q. I'LL START WITH QUESTIONS FROM THE CROSS-EXAMINATION FROM

12:51PM 14 THE PAST, FROM A COUPLE OF WEEKS AGO.

12:51PM 15 A. SURE.

12:51PM 16 Q. AND THE FIRST TOPIC THAT I WOULD LIKE TO TALK TO YOU ABOUT

12:52PM 17 IS THE CONCEPT OF EXECUTION RISK.

12:52PM 18 DO YOU RECALL THAT LINE OF QUESTIONS FROM MR. COOPERSMITH?

12:52PM 19 A. YES, SIR.

12:52PM 20 Q. I THINK YOU WERE ASKED QUESTIONS ABOUT EXECUTION RISKS

12:52PM 21 BEING COMMON IN BUSINESS.

12:52PM 22 DO YOU RECALL THAT?

12:52PM 23 A. YES, SIR.

12:52PM 24 Q. WHEN YOU WERE WORKING ON THE THERANOS PROGRAM ON BEHALF OF

12:52PM 25 WALGREENS, DID YOU EXPECT THAT THERE WOULD BE SOME EXECUTION

12:52PM 1 RISKS?

12:52PM 2 A. SURE. ABSOLUTELY.

12:52PM 3 Q. WHAT KIND OF RISKS WERE YOU CONCERNED ABOUT OR DID YOU

12:52PM 4 PLAN FOR?

12:52PM 5 A. WELL, WE EXPECTED RISKS ACROSS THE BOARD ON THE PROJECT,

12:52PM 6 WHETHER IT WAS OPERATIONAL ISSUES, TECHNICAL ISSUES, WE HEARD A

12:52PM 7 LOT ABOUT TECHNOLOGY INTEGRATION, SO WE KNEW THAT THERE WERE

12:52PM 8 RISKS THERE.

12:52PM 9 YOU KNOW, WILL THE PARTNERSHIP WORK? SO THERE'S A RISK IN

12:52PM 10 THE PARTNERSHIP AS WELL, IN EVERY PARTNERSHIP.

12:53PM 11 WILL THE SERVICE ACTUALLY WORK THE WAY THAT WE DESIGN BY

12:53PM 12 BOTH PARTNERS?

12:53PM 13 THERE'S FINANCIAL RISK. WE'RE INVESTING A LOT OF DOLLARS

12:53PM 14 AND ARE WE GOING TO GET A RETURN BACK?

12:53PM 15 AND SO THERE IS AN ENORMOUS TYPE OF LEVELS OF RISK THAT

12:53PM 16 ARE ALWAYS GOING TO BE PRESENT, AND WE MAKE -- YOU KNOW, WE

12:53PM 17 MAKE GOOD, PRUDENT DECISIONS TO MAKE SURE THAT WE CAN MITIGATE

12:53PM 18 THEM.

12:53PM 19 Q. DID YOU THINK THAT ONE OF THE RISKS WAS THAT THE THERANOS

12:53PM 20 DEVICE COULD ONLY RUN 12 TESTS?

12:53PM 21 MR. COOPERSMITH: OBJECTION. LACKS FOUNDATION.

12:53PM 22 MISSTATES THE EVIDENCE.

12:53PM 23 THE COURT: DO YOU WANT TO ASK SOME FOUNDATIONAL

12:53PM 24 QUESTIONS, MR. SCHENK?

12:53PM 25 MR. SCHENK: YES.

12:53PM 1 Q. WHAT YEAR, IF YOU CAN REMIND THE JURY, DID YOU GET
12:53PM 2 INVOLVED IN THE THERANOS PROGRAM?
12:53PM 3 A. I WAS EXPOSED TO IT IN 2010, '11, I THINK AROUND THAT
12:53PM 4 TIME. AND THEN '13, AND THEN I STARTED TO TAKE MORE OWNERSHIP
12:53PM 5 OF THE PARTNERSHIP IN 2014.
12:53PM 6 Q. SO LET'S TIME STAMP 2014 WHEN YOU STARTED TO TAKE MORE
12:54PM 7 OWNERSHIP OF IT.
12:54PM 8 AT THAT POINT, DID YOU HAVE AN UNDERSTANDING CONCERNING
12:54PM 9 THE NUMBER OF TESTS THAT YOU THOUGHT THERANOS COULD PERFORM ON
12:54PM 10 THERANOS DEVICES?
12:54PM 11 A. YES.
12:54PM 12 Q. AND WHAT WAS THAT UNDERSTANDING?
12:54PM 13 A. MR. BALWANI AND I DISCUSSED A NUMBER OF TESTS THAT COULD
12:54PM 14 BE PERFORMED, AND HE REFERRED ME TO THE THERANOS WEBSITE, AND I
12:54PM 15 FORGET THE EXACT NUMBER, BUT THERE WERE SEVERAL HUNDREDS OF
12:54PM 16 TESTS THAT COULD BE PERFORMED THROUGH THE THERANOS TECHNOLOGY.
12:54PM 17 Q. SO DID YOU THINK THAT ONE OF THE RISKS WAS, WHEN
12:54PM 18 MR. BALWANI REFERRED YOU TO THE WEBSITE AND TOLD YOU THAT
12:54PM 19 THERANOS COULD RUN THOSE TESTS, THAT THAT WASN'T, TRUE?
12:54PM 20 MR. COOPERSMITH: OBJECTION.
12:54PM 21 BY MR. SCHENK:
12:54PM 22 Q. DID YOU THINK THAT THAT WAS A RISK?
12:54PM 23 MR. COOPERSMITH: OBJECTION. LEADING.
12:54PM 24 THE COURT: OVERRULED.
12:54PM 25 DID YOU UNDERSTAND THE QUESTION, SIR?

12:54PM 1 THE WITNESS: CAN YOU PLEASE ASK THE QUESTION?

12:54PM 2 BY MR. SCHENK:

12:54PM 3 Q. SURE. YOU TOLD ME MR. BALWANI REFERRED YOU TO THE WEBSITE

12:54PM 4 AND YOU DIDN'T KNOW HOW MANY TESTS WERE ON IT, BUT I THINK YOU

12:54PM 5 SAID A COUPLE HUNDRED; IS THAT RIGHT?

12:54PM 6 A. THAT'S CORRECT.

12:54PM 7 Q. SO I WANT TO KNOW WHETHER THAT NOT BEING TRUE WAS A RISK

12:55PM 8 THAT YOU ANALYZED. WAS THAT A RISK THAT YOU PREPARED FOR?

12:55PM 9 MR. COOPERSMITH: OBJECTION. LACKS FOUNDATION.

12:55PM 10 LEADING.

12:55PM 11 THE COURT: YOU'RE ASKING HIM, IF THAT WASN'T TRUE,

12:55PM 12 WHETHER THAT WAS A RISK.

12:55PM 13 MR. SCHENK: PRECISELY.

12:55PM 14 THE COURT: DID YOU UNDERSTAND THAT QUESTION?

12:55PM 15 THE WITNESS: RIGHT.

12:55PM 16 THE COURT: YOU CAN ANSWER THAT QUESTION.

12:55PM 17 THE WITNESS: NO, I DIDN'T THINK THAT THAT WAS A

12:55PM 18 RISK.

12:55PM 19 YOU KNOW, IT WAS A PARTNERSHIP. WE, WE TRUSTED EACH OTHER

12:55PM 20 TO MAKE THE PARTNERSHIP WORK, SO WHEN MR. BALWANI TOLD ME THESE

12:55PM 21 ARE THE TESTS AND HERE'S WHICH ONES WITH NUMBERS AND THEY'RE

12:55PM 22 AVAILABLE ON THE WEBSITE FOR ANY PUBLIC CONSUMPTION, I ASSUMED

12:55PM 23 THAT THAT WAS WHAT THEY COULD DELIVER.

12:55PM 24 BY MR. SCHENK:

12:55PM 25 Q. DID YOU HAVE AN UNDERSTANDING ABOUT WHETHER THERANOS COULD

12:55PM 1 GENERATE ACCURATE BLOOD TEST RESULTS?

12:55PM 2 A. THAT WAS MY ASSUMPTION, THAT THEY WERE ACCURATE. IT'S A

12:55PM 3 LAB TEST. IT HAS TO BE ACCURATE.

12:55PM 4 Q. AND WAS THAT A RISK THAT YOU ANALYZED, THAT MAYBE THAT

12:55PM 5 ASSUMPTION WAS WRONG?

12:55PM 6 A. NO. AT THAT TIME IN 2014 WHEN I STARTED ASSUMING

12:56PM 7 RESPONSIBILITY, I DID NOT ASSUME THAT THAT WAS A RISK.

12:56PM 8 Q. AND WHY NOT?

12:56PM 9 A. THE PARTNERSHIP WAS BASED ON THAT. IT WAS BASED ON

12:56PM 10 THERANOS'S NEW PROPRIETARY TECHNOLOGY, FINGERSTICK TECHNOLOGY

12:56PM 11 THAT CAN DO THESE HUNDREDS AND HUNDREDS OF THOUSANDS OF

12:56PM 12 TESTS -- HUNDREDS OF TESTS ACCURATELY. THAT'S WHAT LABS DO.

12:56PM 13 MEDICAL DECISIONS ARE BASED ON LABS, AND SO THE ASSUMPTION

12:56PM 14 THAT THAT WOULD BE INACCURATE WAS NEVER, WAS NEVER IN MY MIND.

12:56PM 15 Q. THE NEXT TOPIC I WANT TO TALK TO YOU A LITTLE BIT ABOUT

12:56PM 16 WAS THE WORK THAT JOHNS HOPKINS WAS DOING FOR WALGREENS.

12:56PM 17 DO YOU RECALL THAT LINE OF QUESTIONS?

12:56PM 18 A. YES, SIR.

12:56PM 19 Q. AND IF WE COULD BRING UP EXHIBIT 20532.

12:56PM 20 YOUR HONOR, THIS EXHIBIT WAS PREVIOUSLY ADMITTED.

12:57PM 21 THE COURT: IT MAY BE PUBLISHED.

12:57PM 22 THE WITNESS: 2052?

12:57PM 23 BY MR. SCHENK:

12:57PM 24 Q. 20532. IT ACTUALLY -- I THINK I MIGHT HAVE WRITTEN THE

12:57PM 25 WRONG NUMBER DOWN.

12:57PM 1 IT'S PAGE 3 OF EXHIBIT 20532. IT'S IN, I BELIEVE, THE
12:57PM 2 FIRST DEFENSE BINDER THAT YOU RECEIVED.
12:57PM 3 A. OH.
12:57PM 4 Q. BUT IT'S ALSO ON THE SCREEN IN FRONT OF YOU IF THAT'S
12:57PM 5 EASIER.
12:57PM 6 A. OH, I SEE IT.
12:57PM 7 Q. DO YOU REMEMBER DISCUSSING THIS DOCUMENT WITH
12:57PM 8 MR. COOPERSMITH DURING YOUR CROSS-EXAMINATION?
12:57PM 9 A. I DO.
12:57PM 10 Q. AND I THINK THAT THE QUESTIONS, OR THE CONVERSATION THAT
12:57PM 11 YOU HAD WITH MR. COOPERSMITH WAS AROUND THE IDEA THAT WALGREENS
12:57PM 12 HAD A BUSINESS RELATIONSHIP WITH JOHNS HOPKINS; IS THAT RIGHT?
12:57PM 13 A. CORRECT.
12:57PM 14 Q. AND DO YOU KNOW WHAT ROLE JOHNS HOPKINS PLAYED IN THE
12:58PM 15 THERANOS RELATIONSHIP?
12:58PM 16 A. AGAIN, I WAS NOT INVOLVED IN THIS WORK.
12:58PM 17 MY UNDERSTANDING WAS THAT JOHNS HOPKINS WAS ASKED BY US,
12:58PM 18 WALGREENS, TO TAKE A LOOK AT THE THERANOS TECHNOLOGY AND ASSESS
12:58PM 19 IT.
12:58PM 20 Q. AND DO YOU KNOW WHAT JOHNS HOPKINS WAS PROVIDED TO REACH
12:58PM 21 ITS CONCLUSIONS?
12:58PM 22 A. I DO NOT KNOW THAT.
12:58PM 23 Q. DO YOU KNOW WHETHER THEY WERE GIVEN A DEVICE?
12:58PM 24 A. I'M NOT AWARE OF THAT.
12:58PM 25 Q. DO YOU KNOW WHAT DATA THEY WERE PROVIDED?

12:58PM 1 A. NO, SIR.

12:58PM 2 Q. IF YOU'LL TURN TO PAGE 4 OF THIS EXHIBIT, THE NEXT PAGE.

12:58PM 3 AND AT THE VERY BOTTOM, IF WE CAN HIGHLIGHT THE SECTION

12:58PM 4 UNDER DISCLAIMER.

12:58PM 5 DO YOU SEE THAT?

12:58PM 6 MAYBE WE CAN ZOOM IN ON THAT AS WELL.

12:58PM 7 MR. JHAVERI, DO YOU SEE WHERE IT SAYS, "THIS INFORMATION

12:58PM 8 IS BEING PROVIDED SOLELY FOR THE BENEFIT OF WALGREENS AND SHALL

12:59PM 9 BE USED BY WALGREENS FOR ITS INTERNAL PURPOSES ONLY. IN

12:59PM 10 ADDITION, THE MATERIALS PROVIDED IN NO WAY SIGNIFY AN

12:59PM 11 ENDORSEMENT BY JOHNS HOPKINS MEDICINE TO ANY PRODUCT OR

12:59PM 12 SERVICE."

12:59PM 13 DID I READ THAT CORRECTLY?

12:59PM 14 A. YES, SIR.

12:59PM 15 Q. MR. JHAVERI, DID YOU EVER GIVE ANYBODY AT THERANOS

12:59PM 16 PERMISSION TO SHARE THIS INFORMATION WITH INVESTORS OF

12:59PM 17 THERANOS?

12:59PM 18 MR. COOPERSMITH: OBJECTION. IN LIGHT OF OTHER

12:59PM 19 EXHIBITS, THE QUESTION LACKS FOUNDATION AND LACKS A BASIS.

12:59PM 20 THE COURT: OVERRULED.

12:59PM 21 YOU CAN ANSWER THE QUESTION.

12:59PM 22 THE WITNESS: I DID NOT.

12:59PM 23 MR. SCHENK: IF WE CAN NOW SHOW EXHIBIT 1708,

12:59PM 24 PLEASE.

12:59PM 25 YOUR HONOR, I BELIEVE THIS HAS ALREADY BEEN PREVIOUSLY

12:59PM 1 ADMITTED.

12:59PM 2 THE COURT: IT MAY BE DISPLAYED.

01:00PM 3 BY MR. SCHENK:

01:00PM 4 Q. DO YOU REMEMBER DISCUSSING THIS EXHIBIT WITH

01:00PM 5 MR. COOPERSMITH?

01:00PM 6 A. YES, SIR.

01:00PM 7 Q. AND IN IT, IT LOOKS LIKE MR. BALWANI IS EMAILING YOU AND

01:00PM 8 MAKES A COMMENT ABOUT, EXCUSE ME, PATIENTS NOT COMPLAINING

01:00PM 9 ABOUT THE VEIN DRAW PERCENT.

01:00PM 10 DO YOU SEE THAT?

01:00PM 11 A. YES, SIR.

01:00PM 12 Q. HOW WOULD A PATIENT KNOW WHAT PERCENT OF DRAWS AT A

01:00PM 13 WALGREENS STORE ARE VENOUS OR FINGERSTICK?

01:00PM 14 A. THE PATIENTS WOULD NOT KNOW WHAT PERCENTAGE WE'RE DOING IN

01:00PM 15 TERMS OF VENOUS DRAW.

01:00PM 16 IN FACT, THE PATIENT WOULD NOT KNOW, COMING IN, WHETHER OR

01:00PM 17 NOT THEY WERE GOING TO GET A FINGERSTICK OR A VENIPUNCTURE.

01:00PM 18 THAT WAS DONE AT THE TIME OF CHECK IN.

01:00PM 19 Q. DID MR. BALWANI TELL YOU THAT THE NUMBER OF VEIN DRAWS

01:00PM 20 WOULD GO DOWN RAPIDLY IN 2014?

01:00PM 21 A. YES, SIR.

01:01PM 22 Q. AND, IN FACT, DID THAT, DID THAT BECOME TRUE? DID VEIN

01:01PM 23 DRAWS GO DOWN RAPIDLY IN 2014?

01:01PM 24 A. IT DID NOT.

01:01PM 25 Q. AND WE'LL TALK ABOUT THIS A LITTLE BIT MORE IN A MOMENT.

01:01PM 1 BUT DO YOU RECALL ON DIRECT YOU AND I HAD A CONVERSATION

01:01PM 2 ABOUT SOME METRICS THAT WALGREENS WAS TRACKING?

01:01PM 3 A. YES.

01:01PM 4 Q. AND WAS VEIN DRAW ONE OF THOSE METRICS?

01:01PM 5 A. YES, IT WAS.

01:01PM 6 Q. AND WHAT WAS THE POINT OF THOSE METRICS? WHAT ROLE DID

01:01PM 7 THEY PLAY IN WALGREENS'S EVALUATION?

01:01PM 8 A. WELL, IT WAS GOING -- THOSE METRICS BASICALLY DEFINE THE

01:01PM 9 SUCCESS OF THE PARTICULAR PROJECT IN THE PARTNERSHIP, AND SO WE

01:01PM 10 HAD OPERATIONAL METRICS, TRAINING METRICS, AND THEN METRICS

01:01PM 11 THAT DEFINED THE PATIENT EXPERIENCE.

01:01PM 12 SO THOSE CONSTITUTED FOR US HOW WE WOULD MAKE THE DECISION

01:01PM 13 WHETHER OR NOT THIS WAS SUCCESSFUL.

01:01PM 14 Q. RIGHT. THANK YOU.

01:01PM 15 IF WE CAN NOW GO TO EXHIBIT 1711.

01:01PM 16 YOUR HONOR, THIS IS ALSO AN ADMITTED EXHIBIT.

01:02PM 17 IF WE CAN GO TO PAGE 10 OF EXHIBIT 1711.

01:02PM 18 MR. JHAVERI, DO YOU RECALL DISCUSSING THIS EXHIBIT?

01:02PM 19 A. YES, SIR.

01:02PM 20 Q. AND REMIND THE JURY WHO PROVIDED THIS INFORMATION TO

01:02PM 21 WALGREENS.

01:02PM 22 A. YEAH. THIS WAS BY MR. BALWANI AND THE THERANOS TEAM THAT

01:02PM 23 PROVIDED THIS INFORMATION.

01:02PM 24 WALGREENS WOULD NOT HAVE THIS INFORMATION, NOR WOULD WE BE

01:02PM 25 ABLE TO MAKE ANY TYPE OF PREDICTIONS AS TO HOW AND WHAT THE

01:02PM 1 PERCENTAGE WOULD BE.

01:02PM 2 AGAIN, THERANOS IS THE LAB. THEY ARE THE EXPERTS AT THIS,

01:02PM 3 SO THEY WOULD PROVIDE THIS TYPE OF INFORMATION.

01:02PM 4 Q. AND DO YOU RECALL ON CROSS-EXAMINATION MR. COOPERSMITH

01:02PM 5 ASKED YOU A QUESTION ABOUT A HYPOTHETICAL LAB FORM THAT HAD TEN

01:02PM 6 TESTS ON IT, AND IF ONE OF THOSE TESTS REQUIRED A VEIN DRAW,

01:02PM 7 ALL OF THE TESTS WOULD BE PERFORMED WITH A VEIN DRAW.

01:02PM 8 DO YOU RECALL THAT?

01:02PM 9 A. YES, SIR.

01:02PM 10 Q. WHERE DID YOU LEARN THAT FROM? WHO TOLD YOU ABOUT THAT

01:03PM 11 PRACTICE, THAT IF ONE TEST REQUIRED A VEIN DRAW, ALL OF THE

01:03PM 12 TESTS WOULD BE CONVERTED TO A VEIN DRAW?

01:03PM 13 A. THAT WAS IN THE DISCUSSION WITH MR. BALWANI.

01:03PM 14 Q. SO THE SAME PERSON WHO TOLD YOU THAT, ALSO TOLD YOU THAT

01:03PM 15 THE VEIN DRAWS WOULD GET BELOW 20 PERCENT BY THE END OF AUGUST?

01:03PM 16 A. THAT'S CORRECT.

01:03PM 17 Q. AND DID THAT END UP BEING TRUE?

01:03PM 18 A. NO, SIR.

01:03PM 19 Q. HOW ABOUT THAT IT WOULD GET BELOW 10 PERCENT BY THE END OF

01:03PM 20 OCTOBER? WAS THAT TRUE?

01:03PM 21 A. NO, THAT DID NOT COME TO FRUITION.

01:03PM 22 Q. AND HOW ABOUT THE NEXT ONE, BELOW 5 PERCENT BY THE END OF

01:03PM 23 THE YEAR, 2014? DID THAT END UP COMING TO FRUITION?

01:03PM 24 A. NO, SIR.

01:03PM 25 Q. IF WE COULD TURN TO PAGE 16 OF THIS EXHIBIT, 1711, PAGE

01:03PM 1 16.

01:03PM 2 DO YOU RECALL DISCUSSING PATIENT FEEDBACK WITH

01:03PM 3 MR. COOPERSMITH?

01:03PM 4 A. YES, SIR.

01:03PM 5 Q. WHO CURATED THIS LIST OF FEEDBACK?

01:03PM 6 A. THAT WAS FROM IT THE THERANOS TEAM.

01:03PM 7 Q. SO THERANOS DECIDED WHICH PATIENT FEEDBACK QUOTES TO

01:04PM 8 SHARE; IS THAT CORRECT?

01:04PM 9 A. CORRECT.

01:04PM 10 BECAUSE, IF I CAN EXPAND ON THAT, THIS WAS ALL THROUGH THE

01:04PM 11 IPAD THAT WAS PROVIDED AT THE END OF THE SESSION OR THE BLOOD

01:04PM 12 DRAW, AND SO THE PATIENTS ALSO HAD AN OPPORTUNITY TO PUT IT IN

01:04PM 13 FREE FORM INTO THAT IPAD.

01:04PM 14 SO THIS WAS INFORMATION THAT WE, AS WALGREENS, DID NOT

01:04PM 15 RECEIVE. IT WENT DIRECTLY TO THERANOS, AND THEN IT WOULD RECAP

01:04PM 16 THE RESULTS.

01:04PM 17 Q. AND IF WE CAN ENLARGE OR ZOOM IN ON THE ONE ON THE SCREEN

01:04PM 18 IN FRONT OF YOU.

01:04PM 19 I'M JUST WONDERING IF EVERY SINGLE ONE OF THESE IS ABOUT

01:04PM 20 PRICE?

01:04PM 21 A. YES, IT IS.

01:04PM 22 Q. I'D LIKE TO NOW TALK TO YOU ABOUT A TOPIC THAT YOU

01:04PM 23 DISCUSSED WITH MR. COOPERSMITH, BOTH THIS MORNING AND A FEW

01:04PM 24 WEEKS AGO, AND THAT'S THIS 2,000 VERSUS 200 ISSUE.

01:05PM 25 DO YOU KNOW WHAT I'M TALKING ABOUT WHEN I SAY THAT?

01:05PM 1 A. YES, SIR.

01:05PM 2 Q. AND SO I WANT TO FIRST BRING UP A COUPLE OF EXHIBITS AND

01:05PM 3 THEN WALK THROUGH THIS AND SEE IF YOU CAN HELP ME UNDERSTAND

01:05PM 4 THIS CONFUSION.

01:05PM 5 COULD WE START WITH EXHIBIT 1884, PAGE 1.

01:05PM 6 DO YOU RECOGNIZE THIS DOCUMENT?

01:05PM 7 A. YES, SIR.

01:05PM 8 Q. SO FIRST LET'S NOTE THE DATE. THE DATE IS AUGUST 11,

01:05PM 9 2014.

01:05PM 10 DO YOU SEE THAT?

01:05PM 11 A. YES.

01:05PM 12 Q. AND IF WE CAN LOOK AT PAGE 4.

01:05PM 13 THIS IS FOR THE PARTNERSHIP MEETING.

01:05PM 14 DO YOU SEE UP AT THE TOP A DATE FOR THE PARTNERSHIP

01:05PM 15 MEETING?

01:05PM 16 A. YES.

01:05PM 17 Q. AND WHAT IS THE DATE?

01:05PM 18 A. AUGUST 6TH.

01:05PM 19 Q. SO ON AUGUST 6TH THERE WAS ONE OF THESE PERIODIC MEETINGS

01:05PM 20 BETWEEN THERANOS AND WALGREENS?

01:05PM 21 A. YES, SIR.

01:05PM 22 Q. AND COULD WE NOW LOOK AT PAGE 9.

01:06PM 23 MR. JHAVERI, DO YOU SEE THIS CHART ON PAGE 9?

01:06PM 24 A. YES.

01:06PM 25 Q. AND COULD YOU EXPLAIN TO THE JURY THE SECOND AND THE THIRD

01:06PM 1 ROW, AND THEN THE COLUMN UNDER 2015? COULD YOU EXPLAIN WHAT
01:06PM 2 INFORMATION IS BEING DEPICTED THERE?

01:06PM 3 A. SURE.

01:06PM 4 SO THERE WERE -- EACH OF THESE -- IN THE FIRST COLUMN
01:06PM 5 THERE'S THREE DIFFERENT ROWS, WELL EXPERIENCE, THERANOS, AND
01:06PM 6 THEN STD PROGRAM AT THE HEALTH CARE CLINICS. EACH OF THEM WERE
01:06PM 7 THREE DISTINCT PRODUCTS.

01:06PM 8 AT WELL EXPERIENCE, WE WERE DESIGNING ALL OF OUR STORES TO
01:06PM 9 BE CONSUMER CENTRIC, PATIENT CENTRIC IN NEWER UPDATED MODELS,
01:06PM 10 AND SO THE 2,000, IN THE NEXT COLUMN DOWN IN 2015, REPRESENTED
01:06PM 11 THE NUMBER OF STORES THAT WE WERE PLANNING TO TOUCH IN 2015 FOR
01:07PM 12 A REMODEL.

01:07PM 13 THE NEXT ROW DOWN IS THERANOS, WHICH REPRESENTS THE
01:07PM 14 THERANOS SERVICES, THE THERANOS WELLNESS CENTERS.

01:07PM 15 AND THE 200, IN THE SECOND COLUMN, REPRESENTS THE NUMBER
01:07PM 16 OF STORES THAT WE WERE PLANNING TO HAVE THERANOS SERVICES IN.

01:07PM 17 AND THE LAST ROW IS THE STD PROGRAM, WHICH WAS BASICALLY
01:07PM 18 SEXUALLY TRANSMITTED DISEASE TESTS THAT WOULD BE DONE AT THE
01:07PM 19 HEALTH CARE CLINICS.

01:07PM 20 SO THE SECOND COLUMN THEN REPRESENTS THE NUMBER OF STORES
01:07PM 21 THAT WE WOULD INCORPORATE THAT SERVICE INTO THE HEALTH CARE
01:07PM 22 CLINIC.

01:07PM 23 AND SO THE PURPOSE OF THIS CHART IS REALLY TO SHOW HOW WE
01:07PM 24 WOULD PLAN TOUCHING THE STORES AND COMBINE EFFORTS WHEREVER WE
01:07PM 25 CAN.

01:07PM 1 SO IF WE HAVE 2,000 STORES THAT WE ARE GOING TO GO TO, THE
01:08PM 2 DISCUSSION WAS, WELL, IF WE'RE GOING TO HAVE 200 STORES THAT
01:08PM 3 HAVE THERANOS IN IT, LET'S PLAN FOR IT NOW SO WE DON'T HAVE TO
01:08PM 4 TOUCH THE STORES MULTIPLE TIMES, WE CAN TOUCH IT ONCE, GET IT
01:08PM 5 DONE, AND GET IT OUT AND SO CUSTOMERS CAN START USING THOSE
01:08PM 6 STORES.

01:08PM 7 AND THE SAME THING WITH THE STD PROGRAM AT THE HEALTH CARE
01:08PM 8 CLINIC.

01:08PM 9 IN 2016 THAT WAS THE NEXT LEVEL NUMBER OF STORES.

01:08PM 10 AND THEN IN 2017, THE NEXT NUMBER OF STORES.

01:08PM 11 AND THAT'S HOW WE PLANNED.

01:08PM 12 Q. IN THIS MEETING IN AUGUST, DID YOU TELL INDIVIDUALS FROM
01:08PM 13 THERANOS THAT WALGREENS WAS GOING TO OPEN 2,000 THERANOS
01:08PM 14 LOCATIONS INSIDE OF WALGREENS STORES?

01:08PM 15 A. NO.

01:08PM 16 WHENEVER WE DID SUBSTITUTIONS ON STORES, YOU KNOW, IT WAS
01:08PM 17 A COLLABORATIVE, IT WAS A PARTNERSHIP DISCUSSION, AND SO WE
01:08PM 18 BOTH AGREED TO WHATEVER STORES THAT WE WOULD GO TO.

01:08PM 19 AND THIS IS THE CHART THAT WE HAD AGREED TO AT THAT
01:08PM 20 MEETING.

01:08PM 21 Q. DID, IN FACT, YOU HAVE TO REDEFINE THE NUMBER OF STORES
01:09PM 22 THAT WALGREENS INTENDED TO OPEN WITH THERANOS LOCATIONS AT THIS
01:09PM 23 MEETING?

01:09PM 24 A. WE DID. I THINK I TALKED ABOUT IT EARLIER.

01:09PM 25 INITIALLY WE HAD ANTICIPATED THAT WE WOULD GO TO 500

01:09PM 1 STORES, AND FOR VARIOUS REASONS -- REMEMBER, AGAIN, THIS WAS A
01:09PM 2 PILOT. WE WERE STILL LEARNING. WE WERE MAKING SURE THAT OUR
01:09PM 3 CAPABILITIES EXIST ON BOTH COMPANIES' SIDE.
01:09PM 4 SO WE HAD REDUCED THAT NUMBER DOWN TO 200, WHICH WAS THE
01:09PM 5 NUMBER THAT WE ALL FELT COMFORTABLE.
01:09PM 6 AND WHEN I SAY "WE," BOTH ORGANIZATIONS, BOTH TEAMS FELT
01:09PM 7 COMFORTABLE.
01:09PM 8 Q. IF WE CAN NOW LOOK AT EXHIBIT 1891.
01:09PM 9 YOUR HONOR, 1891 HAS BEEN PREVIOUSLY ADMITTED.
01:09PM 10 MR. JHAVERI, 1891 IS NOW ON THE SCREEN IN FRONT OF YOU.
01:09PM 11 DO YOU RECOGNIZE THIS DOCUMENT?
01:09PM 12 A. YES, SIR.
01:09PM 13 Q. AND IN THIS EMAIL, DO YOU SEE WHERE YOU TELL MR. BALWANI
01:10PM 14 THAT WE'RE GOING TO TOUCH 2,000 STORES IN 2015?
01:10PM 15 A. YES.
01:10PM 16 Q. AND WHAT WERE YOU REFERRING TO WHEN YOU TOLD MR. BALWANI
01:10PM 17 THAT YOU WERE GOING TO TOUCH 2,000 STORES?
01:10PM 18 A. EXACTLY WHAT WAS DISCUSSED IN THAT -- IN THE PREVIOUS
01:10PM 19 DOCUMENT, WHICH IS, HEY, YOU KNOW, JUST REITERATING, 2,000
01:10PM 20 STORES ARE GOING TO GET TOUCHED.
01:10PM 21 LET'S -- AND OF THOSE 2,000 STORES, WE HAD COMMITTED TO
01:10PM 22 200 STORES THAT WILL HAVE THERANOS. LET'S START PLANNING.
01:10PM 23 LET'S GET WHATEVER INFORMATION THAT WE NEED AND DEFINE WHICH
01:10PM 24 STORES ARE THE 200, AND THAT'S WHAT I'M ASKING FOR HERE.
01:10PM 25 Q. AND DID YOU TELL ME THAT THE MEETING TOOK PLACE ON

01:10PM 1 AUGUST 6TH?

01:10PM 2 A. YES.

01:10PM 3 Q. AND WHAT IS THE DATE OF THIS EMAIL?

01:10PM 4 A. AUGUST 13TH.

01:10PM 5 Q. SO YOU FOLLOWED UP WITH MR. BALWANI AFTER THE MEETING TO

01:10PM 6 FURTHER DISCUSS THIS TOPIC OF TOUCHING 2,000 WELL EXPERIENCE

01:10PM 7 STORES?

01:10PM 8 A. CORRECT.

01:10PM 9 Q. DO YOU RECALL THIS MORNING WHEN MR. COOPERSMITH PLAYED,

01:11PM 10 PLAYED A VIDEO OF SOME OF YOUR PRIOR TESTIMONY?

01:11PM 11 A. YES, SIR.

01:11PM 12 Q. I'D LIKE YOU TO TAKE A LOOK IN THE -- I THINK IT'S THE

01:11PM 13 SECOND DEFENSE BINDER.

01:11PM 14 THE EXHIBIT NUMBER IS 28033. I BELIEVE THE PAGE NUMBER IS

01:11PM 15 218.

01:11PM 16 A. I HAVE IT.

01:11PM 17 Q. YOU'RE THERE?

01:11PM 18 A. YES, SIR.

01:11PM 19 Q. FIRST, DID MR. COOPERSMITH ASK YOU TO LOOK AT THIS SECTION

01:11PM 20 THIS MORNING?

01:12PM 21 A. NO.

01:12PM 22 Q. DID HE PLAY THIS SECTION THIS MORNING?

01:12PM 23 A. NO, SIR.

01:12PM 24 Q. SO I'M GOING TO ASK YOU FIRST TO READ TO YOURSELF

01:12PM 25 BEGINNING ON LINE 9 OF 218 THROUGH PAGE 220, LINE 14. SO A

01:12PM 1 COUPLE OF PAGES.

01:12PM 2 JUST READ IT TO YOURSELF AND LET ME KNOW WHEN YOU'RE DONE.

01:12PM 3 A. OKAY.

01:13PM 4 (PAUSE IN PROCEEDINGS.)

01:13PM 5 THE WITNESS: OKAY.

01:13PM 6 BY MR. SCHENK:

01:13PM 7 Q. HAVE YOU FINISHED READING THAT?

01:13PM 8 A. YES, SIR.

01:13PM 9 Q. WAS THE SAME TOPIC, THAT IS, WHETHER 2,000 STORES REFERRED

01:13PM 10 TO WELL EXPERIENCE STORES, WAS THAT DISCUSSED LATER ON IN THE

01:13PM 11 SAME DEPOSITION THAT YOU SAW THE RECORDING FROM EARLIER?

01:13PM 12 MR. COOPERSMITH: OBJECTION TO THE QUESTION. IT IS

01:13PM 13 MISCHARACTERIZING THE TESTIMONY, AND IT'S READING FROM THE

01:13PM 14 DOCUMENT.

01:13PM 15 THE COURT: OVERRULED.

01:13PM 16 YOU CAN ANSWER THE QUESTION.

01:13PM 17 THE WITNESS: WOULD YOU PLEASE ASK THE QUESTION

01:13PM 18 AGAIN?

01:13PM 19 BY MR. SCHENK:

01:13PM 20 Q. YES. IS WHAT I JUST ASKED YOU TO READ LATER IN THE

01:13PM 21 TRANSCRIPT FROM THE SAME DEPO THAT YOU SAW PLAYED THIS MORNING?

01:13PM 22 A. YES.

01:13PM 23 Q. AND DOES IT COVER THE SAME TOPIC, THE 2,000 STORES?

01:13PM 24 A. YES, IT DOES.

01:13PM 25 MR. SCHENK: YOUR HONOR, UNDER 801(D)(1)(B),

01:13PM 1 PERMISSION TO READ ON PAGE 220, LINE 2 THROUGH LINE 14,
01:14PM 2 OMITTING LINE 8.
01:14PM 3 MR. COOPERSMITH: ONE MOMENT, YOUR HONOR.
01:14PM 4 THE COURT: YES.
01:14PM 5 (PAUSE IN PROCEEDINGS.)
01:15PM 6 MR. COOPERSMITH: YOUR HONOR, I OBJECT. I DON'T
01:15PM 7 THINK THIS QUALIFIES UNDER THE SUBSECTION OF 801 THAT
01:15PM 8 MR. SCHENK CITED.
01:15PM 9 IT'S NOT A PRIOR CONSISTENT STATEMENT.
01:15PM 10 IF YOU LOOK AT THE TEXT CLOSELY, IT DOESN'T COMPUTE, AND
01:15PM 11 IT'S NOT A PROPER STATEMENT UNDER THAT RULE.
01:15PM 12 THAT'S OUR OBJECTION.
01:15PM 13 THE COURT: OKAY. THANK YOU.
01:15PM 14 I WILL ALLOW IT UNDER 801(D)(1)(B)(I) AND (II), AND IT
01:15PM 15 DOES APPEAR TO ADD CLARIFICATION AND THAT RULE OF EVIDENCE
01:15PM 16 APPLIES, SO I WILL ALLOW THAT TO BE READ.
01:15PM 17 MR. SCHENK: THANK YOU VERY MUCH, YOUR HONOR.
01:16PM 18 Q. MR. JHAVERI, IF YOU'LL JUST FOLLOW ALONG AND TELL ME IF
01:16PM 19 I'VE READ IT CORRECTLY.
01:16PM 20 "QUESTION: AND WHEN YOU CONSIDER THIS DOCUMENT,
01:16PM 21 EXHIBIT 953, TOGETHER WITH EXHIBIT 952, DOES THAT GIVE YOU AN
01:16PM 22 UNDERSTANDING THAT THE 2,000 STORES YOU WERE REFERENCING TO
01:16PM 23 MR. BALWANI WERE THE 2,000 WELL EXPERIENCE STORES THAT
01:16PM 24 WALGREENS WAS GOING TO BE WORKING ON IN 2015?
01:16PM 25 "ANSWER: YEAH. BASED ON, BASED ON LOOKING AT THIS BOTH

01:16PM 1 TOGETHER NOW, YEAH, THAT IS CORRECT.

01:16PM 2 "QUESTION: AND THE NUMBER OF THERANOS STORES THAT WAS

01:16PM 3 UNDER DISCUSSION FOR 2015, AS OF AT LEAST THIS DATE,

01:16PM 4 AUGUST 11TH, 2014, WAS 200 ACCORDING TO THIS CHART?

01:16PM 5 "ANSWER: THAT IS CORRECT."

01:16PM 6 MR. JHAVERI, DID I READ THAT CORRECTLY?

01:16PM 7 A. YES.

01:16PM 8 Q. SO IN THE DEPOSITION THAT YOU HAD PLAYED FOR YOU THIS

01:17PM 9 MORNING, DO YOU RECALL THAT?

01:17PM 10 A. YES, SIR.

01:17PM 11 Q. WERE YOU GIVEN AN OPPORTUNITY LATER IN THAT TRANSCRIPT,

01:17PM 12 LATER THAT DAY, TO FURTHER EXPLAIN WHAT YOU MEANT BETWEEN 2,000

01:17PM 13 WELL EXPERIENCE STORES AND 200 THERANOS STORES?

01:17PM 14 A. YES, I WAS.

01:17PM 15 AFTER I GAVE THAT TESTIMONY, I REALIZED THAT I HAD GOTTEN

01:17PM 16 SOME OF THE DOCUMENTS CONFUSED, AND SO I DID ASK TO HAVE IT

01:17PM 17 CLARIFIED, AND I BELIEVE THAT IT WAS ALL CORRECTED IN THE

01:17PM 18 TESTIMONY.

01:17PM 19 Q. AND TODAY WHAT IS YOUR BELIEF REGARDING 2,000 STORES?

01:17PM 20 WERE THE 2,000 STORES THERANOS STORES, OR WERE THEY WELL

01:17PM 21 EXPERIENCE STORES?

01:17PM 22 A. THEY WERE WELL EXPERIENCE STORES.

01:17PM 23 MR. BALWANI AND I HAD A, YOU KNOW, A DISCUSSION ABOUT

01:17PM 24 THIS. HE WAS CERTAINLY WELL AWARE OF IT, AND THAT WAS THE PLAN

01:17PM 25 IS TO GO TO 2,000 STORES FOR WELL EXPERIENCE, AND THE 200

01:17PM 1 STORES FOR THERANOS ALONG WITH IT, AND WE WERE IN THE PROCESS
01:18PM 2 OF DETERMINING WHAT THOSE STORES WERE, AND THAT WAS WHAT THE
01:18PM 3 GOAL WAS.

01:18PM 4 Q. THANK YOU.

01:18PM 5 THE NEXT TOPIC I WOULD LIKE TO TALK TO YOU ABOUT IS SOME
01:18PM 6 OF THE WORK THAT OCCURRED IN 2010, AND THEN I THINK YOU SAID
01:18PM 7 YOU REVIEWED MATERIALS WHEN YOU BECAME MORE INVOLVED IN THE
01:18PM 8 LATER PART OF 2013 AND 2014.

01:18PM 9 DO YOU RECALL THAT TESTIMONY?

01:18PM 10 A. YES, SIR.

01:18PM 11 Q. IN 2010, DID YOU TAKE MR. BALWANI AND MS. HOLMES ON A
01:18PM 12 TOUR?

01:18PM 13 A. I DID.

01:18PM 14 Q. AND REMIND THE JURY WHAT WAS INVOLVED IN THAT, PLEASE.

01:18PM 15 A. YES. I ACTUALLY RECEIVED -- IN 2010 I RECEIVED A PHONE
01:18PM 16 CALL FROM DR. ROSAN WHO WAS MEETING WITH MR. BALWANI AND
01:18PM 17 MS. HOLMES AT THE TIME. THEY HAD A TOP-TO-TOP MEETING TO
01:18PM 18 DISCUSS THE PARTNERSHIP, AND DR. ROSAN ASKED ME TO GIVE A TOUR
01:18PM 19 TO MS. HOLMES AND MR. BALWANI OF OUR NEW WELL EXPERIENCE STORE
01:18PM 20 THAT WAS LOCATED IN WHEELING, ILLINOIS WHICH IS ABOUT 15
01:19PM 21 MINUTES FROM THE CORPORATE HEADQUARTERS OF WALGREENS.

01:19PM 22 I SAID I WOULD BE MORE THAN HAPPY TO DO THAT. CERTAINLY I
01:19PM 23 HAD HEARD ABOUT THERANOS AND THE POTENTIAL PARTNERSHIP THAT WAS
01:19PM 24 COMING.

01:19PM 25 SO I MET BOTH MR. BALWANI AND MS. HOLMES AT THE STORE.

01:19PM 1 AND WHAT I PROVIDED THEM WITH IS A TOUR OF THE NEW
01:19PM 2 REMODELLED STORE IN WHEELING, NEW WAITING AREA, NEW PHARMACY,
01:19PM 3 NEW CONSULTATION ROOM OR PRIVATE HEALTH ROOM, AND THEN A NEW
01:19PM 4 SPACE CALLED THE COMMUNITY ROOM. AND WE BUILT THAT ROOM
01:19PM 5 BASICALLY TO PROVIDE ANY TYPE OF FUTURE SERVICES.

01:19PM 6 SO WHAT I WAS SHOWING MR. BALWANI AND MS. HOLMES WAS THAT
01:19PM 7 THIS SPACE COULD BE USED FOR ANYTHING FROM DIABETES EDUCATION
01:19PM 8 TO LAB SERVICES, AND THAT WAS THE PURPOSE OF THE VISIT.

01:19PM 9 IT WAS ABOUT 15 OR 20 MINUTES LONG. THEY WERE CERTAINLY
01:19PM 10 VERY EXCITED ABOUT THE NEW MODEL, BECAUSE IT ALLOWED US TO
01:20PM 11 REALLY EXPAND INTO THE HEALTH CARE SPACE THROUGH DIFFERENT
01:20PM 12 SERVICES.

01:20PM 13 Q. THANK YOU.

01:20PM 14 AND REMIND US ALSO ABOUT, I'LL CALL IT DUE DILIGENCE, THE
01:20PM 15 WORK THAT YOU DID IN THE 2013, 2014 TIME PERIOD TO GET UP TO
01:20PM 16 SPEED ON THE THERANOS PROJECT.

01:20PM 17 WHAT DID YOU DO AT THAT POINT?

01:20PM 18 A. YEAH, YOU KNOW, SO I CERTAINLY MET WITH ALL OF MY NEW TEAM
01:20PM 19 TO UNDERSTAND, YOU KNOW, WHERE THEY WERE AT, WHAT WAS GOING ON.

01:20PM 20 I MET WITH THE EXECUTIVES, WADE MIQUELON, DR. JAY ROSAN,
01:20PM 21 TO REALLY UNDERSTAND WHAT IS THE ACTUAL PROJECT, WHAT ARE WE
01:20PM 22 TRYING TO DO, WHO WAS THE PARTNER, AND WHO IS MY COUNTERPART AT
01:20PM 23 THERANOS, AND THEN WHERE DO WE NEED TO GO?

01:20PM 24 AND SO ONCE I HAD THAT UNDERSTANDING, THEN I COULD HELP
01:20PM 25 SHEPHERD THIS PROJECT TOWARDS THAT GOAL.

01:20PM 1 Q. AND I'M NOT ASKING WHAT DR. ROSAN TOLD YOU, I'M JUST
01:20PM 2 WONDERING, DID DR. ROSAN COMMUNICATE INFORMATION TO YOU?
01:21PM 3 YOU SAID YOU MET WITH PEOPLE LIKE WADE MIQUELON AND
01:21PM 4 JAY ROSAN. SO WERE THEY SOURCES FOR YOU WHEN YOU WERE
01:21PM 5 REENGAGING IN THE PROJECT IN 2013 AND 2014?
01:21PM 6 A. YES, SIR.
01:21PM 7 MR. SCHENK: YOUR HONOR, MAY I APPROACH?
01:21PM 8 THE COURT: YES.
01:21PM 9 MR. SCHENK: (HANDING.)
01:21PM 10 Q. MR. JHAVERI, I'VE HANDED YOU EXHIBIT 273.
01:21PM 11 DO YOU SEE THAT DOCUMENT?
01:21PM 12 A. YES, SIR.
01:21PM 13 Q. AND 273 HAS TWO EMAILS ON THE FIRST PAGE AND THEN
01:21PM 14 ATTACHMENTS AFTERWARDS.
01:21PM 15 DO YOU SEE THAT?
01:21PM 16 A. YES, I DO.
01:21PM 17 Q. IS THE 2010 EMAIL FROM MS. HOLMES TO DR. ROSAN AND
01:22PM 18 MR. BALWANI?
01:22PM 19 A. YES, IT IS.
01:22PM 20 Q. AND IS THE EMAIL ON TOP A FORWARD FROM MS. HOLMES TO
01:22PM 21 MR. BALWANI ABOUT TWO YEARS LATER?
01:22PM 22 A. YES.
01:22PM 23 MR. SCHENK: YOUR HONOR, THE GOVERNMENT OFFERS 273.
01:22PM 24 MR. COOPERSMITH: YOUR HONOR, 401 AND 802.
01:22PM 25 MR. SCHENK: IT'S HIGHLY RELEVANT, AND IT'S A

01:22PM 1 BUSINESS RECORD.

01:22PM 2 THE COURT: THE OBJECTION IS OVERRULED.

01:22PM 3 IT'S ADMITTED, AND IT MAY BE PUBLISHED.

01:22PM 4 (GOVERNMENT'S EXHIBIT 273 WAS RECEIVED IN EVIDENCE.)

01:22PM 5 MR. SCHENK: THANK YOU.

01:22PM 6 Q. MR. JHAVERI, IF WE CAN START WITH THE EMAIL FROM

01:22PM 7 MS. HOLMES TO DR. ROSAN AND MR. BALWANI.

01:22PM 8 DO YOU SEE THAT?

01:22PM 9 A. YES, SIR.

01:22PM 10 Q. AND WHAT IS THE DATE OF THAT EMAIL?

01:22PM 11 A. MARCH 15TH, 2010.

01:22PM 12 Q. AND IT LOOKS LIKE IN THE SECOND LINE OF THE EMAIL FROM

01:23PM 13 MS. HOLMES, SHE WRITES, "PLEASE FIND THE MATERIALS DISCUSSED ON

01:23PM 14 OUR LAST CALL ATTACHED TO THIS EMAIL FOR YOUR INTERNAL USE AND

01:23PM 15 CIRCULATION."

01:23PM 16 DO YOU SEE THAT?

01:23PM 17 A. YES, SIR.

01:23PM 18 Q. AND THEN ABOVE THE EMAIL, THE EMAIL ABOVE ON THIS SCREEN

01:23PM 19 AT THE VERY TOP, DO YOU SEE WHERE MS. HOLMES FORWARDS THIS

01:23PM 20 AGAIN TO MR. BALWANI, BUT THIS TIME IN AUGUST OF 2012?

01:23PM 21 A. YES.

01:23PM 22 Q. AND DO YOU SEE THAT THERE ARE SOME ATTACHMENTS?

01:23PM 23 A. YES.

01:23PM 24 Q. I'D LIKE TO ASK YOU ABOUT A COUPLE OF LINES IN THE

01:23PM 25 ATTACHMENTS.

01:23PM 1 ON PAGE 11 OF EXHIBIT 273, DO YOU SEE, UNDER VALIDATION OF
01:23PM 2 THERANOS SYSTEMS, "THERANOS SYSTEMS HAVE BEEN COMPREHENSIVELY
01:23PM 3 VALIDATED OVER THE COURSE OF THE LAST SEVEN YEARS BY TEN OF THE
01:23PM 4 FIFTEEN LARGEST PHARMACEUTICAL COMPANIES"?

01:23PM 5 A. YES.

01:23PM 6 Q. AND DOES IT APPEAR THAT THAT INFORMATION WAS COMMUNICATED
01:24PM 7 IN MARCH OF 2010 FROM MS. HOLMES TO DR. ROSAN?

01:24PM 8 A. YES.

01:24PM 9 Q. IF YOU'LL NOW TURN TO PAGE 31.
01:24PM 10 ON PAGE 31, IF WE CAN ZOOM IN ON THE FIRST PARAGRAPH. DO
01:24PM 11 YOU SEE WHERE THERE'S A DESCRIPTION OF THERANOS AS "A
01:24PM 12 SILICON VALLEY, CALIFORNIA COMPANY THAT FOR THE FIRST TIME CAN
01:24PM 13 RUN ANY BLOOD TEST IN REAL-TIME FOR LESS THAN HALF THE COST OF
01:24PM 14 CENTRAL LAB TESTS"?

01:24PM 15 A. YES, I DO.

01:24PM 16 Q. AND IF YOU'LL NOW LOOK AT THE PARAGRAPH THAT BEGINS, "THE
01:24PM 17 ABILITY."

01:24PM 18 IT'S ABOUT HALFWAY DOWN THE PAGE.
01:24PM 19 "THE ABILITY TO RUN BLOOD TESTS FROM A FINGERSTICK IN LESS
01:24PM 20 THAN AN HOUR AT WALGREENS CREATES A NEW WORKFLOW FOR HEALTH
01:24PM 21 CARE."

01:24PM 22 DO YOU SEE THAT?

01:25PM 23 A. YES.

01:25PM 24 Q. AND WAS THAT ALSO SHARED BY MS. HOLMES WITH DR. ROSAN AND
01:25PM 25 MR. BALWANI IN MARCH OF 2010?

01:25PM 1 A. YES, IT APPEARS SO.

01:25PM 2 Q. I'D LIKE TO COVER A COUPLE OF TOPICS THAT YOU COVERED WITH

01:25PM 3 MR. COOPERSMITH THIS MORNING. THE FIRST ONE IS EXHIBIT 2214.

01:25PM 4 YOUR HONOR, 2214 HAS BEEN PREVIOUSLY ADMITTED. PERMISSION

01:25PM 5 TO PUBLISH?

01:25PM 6 THE COURT: YES.

01:25PM 7 MR. SCHENK: THANK YOU.

01:25PM 8 Q. IF WE CAN GO TO PAGE 6 ON 2214.

01:25PM 9 DO YOU RECALL A DISCUSSION WITH MR. COOPERSMITH THIS

01:25PM 10 MORNING WHERE YOU SAW THE VEIN DRAW PERCENT GO TO ABOUT I THINK

01:25PM 11 IT WAS 34 PERCENT?

01:25PM 12 DO YOU RECALL THAT?

01:25PM 13 A. I DO.

01:25PM 14 Q. AND WAS THAT IN JULY OF 2014?

01:26PM 15 A. I BELIEVE SO.

01:26PM 16 Q. DOES THIS DOCUMENT, EXHIBIT 2214, SHOW US THAT THE VEIN

01:26PM 17 DRAW PERCENT THROUGHOUT THE ENTIRE YEAR OF 2014 WAS 40 PERCENT?

01:26PM 18 A. YES, IT DOES.

01:26PM 19 Q. AND DID THAT VEIN DRAW PERCENT INFLUENCE WALGREENS'S

01:26PM 20 DECISION ABOUT WHETHER OR NOT TO HAVE ADDITIONAL STORES

01:26PM 21 BEYOND 40 IN ARIZONA?

01:26PM 22 A. YES.

01:26PM 23 Q. WHY?

01:26PM 24 A. THIS WAS ONE OF THE REASONS WHY WE HAD THE PARTNERSHIP

01:26PM 25 WITH THERANOS. IT WAS THE TECHNOLOGY THAT THEY HAD DEVELOPED

01:26PM 1 TO BE ABLE TO RUN ALL OF THE TESTS ON A FINGERSTICK. THE IDEA
01:26PM 2 WAS IT WAS LESS PAINFUL, IT WAS FASTER, IT WAS CHEAPER, AND
01:26PM 3 PATIENTS THAT WOULD OTHERWISE NOT WANT TO GET THEIR LAB TEST
01:26PM 4 DONE THROUGH A NORMAL MEANS WOULD OTHERWISE NOW GET IT DONE
01:27PM 5 BECAUSE IT'S NOT AS PAINFUL AND IT'S QUICK.

01:27PM 6 SO FOR US, THIS WAS -- THIS WAS THE, YOU KNOW, THE SELLING
01:27PM 7 POINT OF THE PARTNERSHIP WITH THERANOS, AND THAT'S WHY THIS WAS
01:27PM 8 A BIG METRIC THAT WE MONITORED.

01:27PM 9 Q. AND WAS THE IMPORTANCE OF VEIN DRAW PERCENT SOMETHING THAT
01:27PM 10 YOU COMMUNICATED TO MR. BALWANI?

01:27PM 11 A. YES.

01:27PM 12 Q. WOULD YOU NOW LOOK AT EXHIBIT 2275.

01:27PM 13 YOUR HONOR, THIS HAS ALREADY BEEN PREVIOUSLY ADMITTED.

01:27PM 14 ON THIS DOCUMENT, MR. JHAVERI, DO YOU TALK ABOUT AN
01:27PM 15 ACCEPTABLE VENOUS DRAW PERCENT FOR SOMETHING CALLED THE HUB AND
01:27PM 16 SPOKE MODEL?

01:27PM 17 A. YES.

01:27PM 18 Q. AND WAS THIS COMMUNICATED DIRECTLY TO MR. BALWANI?

01:27PM 19 A. YES, SIR.

01:27PM 20 Q. I'D LIKE TO TALK TO YOU ABOUT THREE COMPANIES THAT CAME UP
01:27PM 21 THIS MORNING: GENENTECH, ABBOTT, AND PFIZER.

01:27PM 22 DO YOU RECALL THAT LINE OF QUESTIONING?

01:27PM 23 A. YES, SIR.

01:27PM 24 Q. AND DO YOU KNOW IF ANYTHING EVER CAME OF THE RELATIONSHIP
01:28PM 25 BETWEEN THERANOS, WALGREENS, AND GENENTECH?

01:28PM 1 A. I'M NOT AWARE OF ANY.

01:28PM 2 Q. SAME QUESTION FOR ABBOTT. DO YOU KNOW IF ANYTHING EVER

01:28PM 3 CAME OF THAT?

01:28PM 4 A. NO, SIR.

01:28PM 5 Q. SAME QUESTION FOR PFIZER IN 2015. DO YOU KNOW IF ANYTHING

01:28PM 6 EVER CAME OF THAT?

01:28PM 7 A. NO, SIR.

01:28PM 8 Q. WOULD THE TYPE OF DRAW THAT A PATIENT RECEIVES EFFECT WAIT

01:28PM 9 TIME? IN OTHER WORDS, IF A PATIENT GOES INTO A WALGREENS STORE

01:28PM 10 AND THEY RECEIVED A VENOUS DRAW OR THEY RECEIVED A FINGERSTICK

01:28PM 11 DRAW, WOULD THAT HAVE AN EFFECT ON WAIT TIME?

01:28PM 12 A. NOT THE WAIT TIME, BUT THE PROCESS TIME.

01:28PM 13 SO WHEN THEY'RE IN THE ROOM HAVING THEIR BLOOD EXTRACTED,

01:28PM 14 THAT'S WHEN THE TIME WOULD BE IMPACTED.

01:28PM 15 Q. I SEE. SO WHEN THERE WAS DISCUSSION ABOUT THE PROCESSING

01:28PM 16 TIME, WAS THAT ANOTHER WAY TO TALK ABOUT THE IMPORTANCE OF

01:28PM 17 FINGERSTICK OVER VENOUS DRAW?

01:29PM 18 A. YES, BECAUSE THE WAIT TIME -- THE WAIT TIME, THE TIME TO

01:29PM 19 DO THE PROCESS IS MUCH LESS FOR A FINGERSTICK THAN A

01:29PM 20 VENOUS DRAW.

01:29PM 21 Q. THANK YOU. IF WE CAN NOW BRING UP EXHIBIT 20244.

01:29PM 22 THIS HAS ALSO BEEN PREVIOUSLY ADMITTED, YOUR HONOR.

01:29PM 23 DO YOU REMEMBER DISCUSSING THIS EXHIBIT WITH

01:29PM 24 MR. COOPERSMITH THIS MORNING?

01:29PM 25 A. YES, SIR.

01:29PM 1 Q. IN IT I THINK MR. BALWANI MAKES REFERENCE TO "PLAIN OLD
01:29PM 2 MARKET TRACTION."
01:29PM 3 DO YOU SEE THAT?
01:29PM 4 A. YES, SIR.
01:29PM 5 Q. AFTER THERE WERE SOME STATEMENTS ABOUT INCREASED PATIENTS
01:29PM 6 OR CUSTOMERS IN STORES?
01:29PM 7 A. CORRECT.
01:29PM 8 Q. WOULD YOU TELL THE JURY THE DATE OF THE VERY TOP EMAIL
01:29PM 9 WHERE MR. BALWANI MAKES REFERENCE TO MARKET TRACTION?
01:29PM 10 A. APRIL 8TH, 2015.
01:29PM 11 Q. COULD WE NOW BRING UP 5387H.
01:29PM 12 PERMISSION TO PUBLISH, YOUR HONOR, PAGE 42? IT'S BEEN
01:30PM 13 PREVIOUSLY ADMITTED.
01:30PM 14 THE COURT: YES.
01:30PM 15 BY MR. SCHENK:
01:30PM 16 Q. AND ABOUT HALFWAY DOWN THE PAGE, MR. JHAVERI, DO YOU SEE A
01:30PM 17 TEXT MESSAGE WHERE MR. BALWANI WRITES, "GOING THRU CVS
01:30PM 18 CONTRACT. WE CAN'T WORK WITH WAG OR CVS. BOTH ARE SAME."
01:30PM 19 DO YOU SEE THAT?
01:30PM 20 A. YES.
01:30PM 21 Q. AND WHAT IS THE DATE OF THIS TEXT MESSAGE?
01:30PM 22 A. APRIL 9TH, 2015.
01:30PM 23 Q. AND IS THAT ONE DAY AFTER THE EMAIL THAT YOU AND I JUST
01:30PM 24 LOOKED AT?
01:30PM 25 A. YES.

01:30PM 1 Q. YOU AND I HAVE SPOKEN ABOUT THE METRICS THAT WALGREENS WAS
01:30PM 2 TRACKING, AND I THINK YOU SAID THAT WAS USEFUL IN DETERMINING
01:30PM 3 FURTHER EXPANSION; IS THAT RIGHT?
01:30PM 4 A. CORRECT.
01:30PM 5 Q. COULD WE BRING UP EXHIBIT 1896. IN 1896 -- DO YOU
01:30PM 6 RECOGNIZE THIS DOCUMENT?
01:31PM 7 A. YES, I DO.
01:31PM 8 Q. IN THE DOCUMENT, YOU INFORM MR. BALWANI THAT IT WOULD BE
01:31PM 9 DIFFICULT TO CONVINCE MANAGEMENT TO EXPAND BEYOND ARIZONA FOR A
01:31PM 10 COUPLE OF REASONS.
01:31PM 11 DO YOU SEE THAT?
01:31PM 12 A. YES.
01:31PM 13 Q. AND WHY WAS THAT? WHY MIGHT IT BE DIFFICULT TO CONVINCE
01:31PM 14 MANAGEMENT TO EXPAND BEYOND ARIZONA?
01:31PM 15 A. WELL, AGAIN, WE WERE DOING THE PILOT, AND TWO OF THE
01:31PM 16 METRICS THAT WE WERE LOOKING AT, OF MANY, AS I EXPLAINED
01:31PM 17 BEFORE, WAS, OF COURSE, PATIENTS PER DAY WITH A GREAT
01:31PM 18 EXPERIENCE BEING NOT ONLY THE NUMBER OF PATIENTS, BUT WERE THEY
01:31PM 19 RECEIVING A GREAT EXPERIENCE; AND THEN THE SECOND WAS THE
01:31PM 20 VENOUS PERCENT GOING BELOW 10 PERCENT RANGE.
01:31PM 21 Q. TODAY I THINK YOU AND MR. COOPERSMITH REVIEWED SEVERAL
01:31PM 22 EMAILS IN THE 2015 TIMEFRAME.
01:31PM 23 DO YOU RECALL THAT?
01:31PM 24 A. YES.
01:31PM 25 Q. AND EMAILS TALKING ABOUT THE NUMBER OF STORES THAT

01:31PM 1 THERANOS AND WALGREENS WERE PLANNING FOR; IS THAT RIGHT?

01:32PM 2 A. YES.

01:32PM 3 Q. AND IN EXHIBIT 1896 -- CAN YOU REMIND THE JURY THE DATE OF

01:32PM 4 THIS EMAIL?

01:32PM 5 A. AUGUST 15TH, 2014.

01:32PM 6 Q. DID WALGREENS EVER OPEN MORE THAN 40 STORES IN ARIZONA?

01:32PM 7 A. NO, SIR.

01:32PM 8 Q. DID WALGREENS EVER OPEN MORE THAN ONE STORE, THE PALO ALTO

01:32PM 9 STORE, WITH THERANOS SERVICES IN CALIFORNIA?

01:32PM 10 A. NO, SIR.

01:32PM 11 Q. SO ALL OF THE EMAILS THAT YOU SAW TALKING ABOUT PLANS FOR

01:32PM 12 2015, DID ANY OF THEM EVER COME TO FRUITION?

01:32PM 13 A. NO, SIR.

01:32PM 14 Q. WAS THE VENOUS DRAW PERCENT ONE OF THE REASONS WHY?

01:32PM 15 A. IT WAS ONE OF THE REASONS, CORRECT.

01:32PM 16 Q. AMONG THE REASONS, YOU COVERED ONE WITH MR. COOPERSMITH,

01:32PM 17 HE ASKED YOU ABOUT A "WALL STREET JOURNAL" ARTICLE.

01:32PM 18 DO YOU RECALL THAT?

01:32PM 19 A. YES, SIR.

01:32PM 20 Q. AND I THINK HIS QUESTION TO YOU WAS, DID THINGS CHANGE

01:32PM 21 AFTER "THE WALL STREET JOURNAL" ARTICLE?

01:32PM 22 DO YOU RECALL THAT?

01:32PM 23 A. YES, SIR.

01:32PM 24 Q. AND WHAT WAS YOUR ANSWER?

01:32PM 25 A. THINGS DID CHANGE.

01:32PM 1 Q. DID THE RELATIONSHIP END BECAUSE OF NEGATIVE MEDIA
01:33PM 2 COVERAGE?
01:33PM 3 A. NO. THE RELATIONSHIP ENDED -- OF COURSE WE HAD A LOT OF
01:33PM 4 QUESTIONS WHEN THAT ARTICLE CAME OUT. THERE WAS A LOT OF
01:33PM 5 INFORMATION IN THAT ARTICLE THAT WE WERE JUST NOT AWARE OF, AND
01:33PM 6 SO WE WERE TRYING TO FIGURE OUT WHAT WAS THE TRUTH.
01:33PM 7 AND SO I HAD REACHED OUT TO MR. BALWANI, AND THEN
01:33PM 8 SUBSEQUENTLY OUR CHIEF MEDICAL OFFICER BECAME VERY INVOLVED,
01:33PM 9 OUR COUNSEL BECAME INVOLVED, AND WE TRIED TO UNDERSTAND WHAT
01:33PM 10 WAS TRULY GOING ON.
01:33PM 11 WHEN WE REALIZED THAT PATIENTS WERE NOW POTENTIALLY BEING
01:33PM 12 HARMED AND ALL OF THE TESTS WERE VOIDED IS WHEN WE COMPLETELY
01:33PM 13 STOPPED ALL OF THE OPERATION.
01:33PM 14 MR. COOPERSMITH: OBJECTION, YOUR HONOR. MOVE TO
01:33PM 15 STRIKE. IT'S NONRESPONSIVE AND IT'S PREJUDICIAL, 403.
01:33PM 16 THE COURT: I THINK THIS WAS THIS WITNESS'S OPINION
01:33PM 17 OF THAT. WHETHER OR NOT IT'S ACCURATE OR NOT IS SUBJECT TO
01:34PM 18 QUESTIONING, BUT IT WAS HIS OPINION.
01:34PM 19 SO I'LL OVERRULE THE OBJECTION. THE ANSWER CAN REMAIN.
01:34PM 20 MR. SCHENK: THANK YOU.
01:34PM 21 Q. MR. JHAVERI, WAS THERANOS EVER ABLE TO PROVIDE
01:34PM 22 SATISFACTORY ANSWERS TO WALGREENS'S QUESTIONS AT THIS TIME?
01:34PM 23 A. NO.
01:34PM 24 Q. FINALLY, I'D LIKE TO TALK TO YOU ABOUT YOUR BLOOD TEST
01:34PM 25 RESULTS. DO YOU RECALL I THINK IT WAS EXHIBIT 966?

01:34PM 1 A. YES, SIR.

01:34PM 2 Q. DO YOU RECALL REVIEWING THAT WITH MR. COOPERSMITH?

01:34PM 3 A. YES, SIR.

01:34PM 4 Q. AND I THINK THE LINE OF QUESTIONING WAS YOUR RESULTS WITH

01:34PM 5 THERANOS WERE THE SAME AS A DIFFERENT BUT SIMULTANEOUS BLOOD

01:34PM 6 TEST THAT YOU HAD; IS THAT RIGHT?

01:34PM 7 A. CORRECT.

01:34PM 8 Q. COULD WE BRING UP EXHIBIT 957. THAT ALSO HAS BEEN

01:34PM 9 PREVIOUSLY ADMITTED.

01:34PM 10 MR. JHAVERI, DO YOU REMEMBER ON DIRECT SEEING THIS

01:34PM 11 EXHIBIT?

01:34PM 12 A. YES.

01:34PM 13 Q. AND THIS IS AN EXHIBIT THAT YOU ARE NOT ON; IS THAT

01:35PM 14 CORRECT?

01:35PM 15 A. CORRECT.

01:35PM 16 Q. IN THIS EXHIBIT, THOUGH, DID YOU SEE THAT YOUR BLOOD TEST

01:35PM 17 AND OTHERS FROM WALGREENS WERE ACTUALLY RUN ON ADVIA MACHINES?

01:35PM 18 A. YES.

01:35PM 19 Q. SO WAS THERANOS ABLE TO MATCH A DIFFERENT LAB ACCORDING TO

01:35PM 20 MR. COOPERSMITH, BUT USING AN ADVIA MACHINE?

01:35PM 21 A. YES, ACCORDING TO THIS EMAIL.

01:35PM 22 Q. THANK YOU.

01:35PM 23 NO FURTHER QUESTIONS.

01:35PM 24 THE COURT: RECROSS.

01:35PM 25

01:36PM 1 RECROSS-EXAMINATION

01:36PM 2 BY MR. COOPERSMITH:

01:36PM 3 Q. HELLO, MR. JHAVERI.

01:36PM 4 A. HI. HOW ARE YOU?

01:36PM 5 Q. JUST SWELL. THANK YOU.

01:36PM 6 SO I JUST WANT TO FOLLOW UP ON A FEW THINGS THAT YOU WERE

01:36PM 7 JUST QUESTIONED ABOUT BY MR. SCHENK.

01:36PM 8 SO LET'S JUST START WHERE WE LEFT OFF ABOUT THE TESTS THAT

01:36PM 9 YOU HAD AT THERANOS IN AUGUST OF 2013.

01:36PM 10 A. YES.

01:36PM 11 Q. AND MR. SCHENK JUST POINTED YOU TO AN EMAIL THAT SHOWED

01:36PM 12 THAT THE TESTING WAS ON SOMETHING CALLED THE ADVIA.

01:36PM 13 DO YOU REMEMBER THAT?

01:36PM 14 A. CORRECT.

01:36PM 15 Q. CORRECT. BUT DURING THE TESTS, I THINK YOU SAID THIS

01:36PM 16 ALREADY, BUT I JUST WANT TO CONFIRM, YOU ACTUALLY HAD A

01:36PM 17 FINGERSTICK TEST?

01:36PM 18 A. THE BLOOD TESTS -- YEAH, THE BLOOD WAS DRAWN BY A

01:37PM 19 FINGERSTICK.

01:37PM 20 Q. RIGHT. NOT A VENOUS DRAW?

01:37PM 21 A. NOT A VENOUS DRAW.

01:37PM 22 Q. RIGHT. SO THEY TOOK THE FINGERSTICK TEST, AND THAT

01:37PM 23 FINGERSTICK TEST IS WHAT -- THE ONLY SAMPLE THAT YOU GAVE THAT

01:37PM 24 GAVE THE RESULTS THAT YOU WERE THEN EMAILED AND WE DISCUSSED

01:37PM 25 EARLIER WHEN I WAS QUESTIONING YOU; RIGHT?

01:37PM 1 A. THAT'S CORRECT.

01:37PM 2 Q. OKAY. AND YOU'RE AWARE THAT AN ADVIA MACHINE, IF YOU BUY

01:37PM 3 IT FROM SIEMENS, CANNOT DO FINGERSTICK TESTING; RIGHT?

01:37PM 4 A. THAT IS MY UNDERSTANDING, YES, CORRECT.

01:37PM 5 Q. OKAY. AND YOU UNDERSTAND THAT THERANOS USED ITS OWN

01:37PM 6 SCIENTIFIC TECHNOLOGY TO MODIFY THAT MACHINE SO IT COULD DO

01:37PM 7 FINGERSTICK TESTING; RIGHT?

01:37PM 8 A. I'M NOT FULLY AWARE OF THE DETAILS OF THAT, SIR, OF WHAT

01:37PM 9 WAS DONE.

01:37PM 10 Q. OKAY.

01:37PM 11 A. SO I CAN'T REALLY ANSWER THAT QUESTION.

01:37PM 12 Q. OKAY. I WANT TO GO BACK TO A POINT THAT MR. SCHENK WAS

01:37PM 13 MAKING, AND YOU REMEMBER THERE WAS A DISCUSSION ABOUT A

01:38PM 14 PARTICULAR VIDEO THAT I PLAYED TO YOU?

01:38PM 15 A. YES.

01:38PM 16 Q. OF SOME PRIOR TESTIMONY?

01:38PM 17 A. YES.

01:38PM 18 Q. AND HE SHOWED YOU SOME OTHER TESTIMONY; RIGHT?

01:38PM 19 A. YES, SIR.

01:38PM 20 Q. OR AT LEAST HE READ IT. AND THAT RELATED TO THE SUBJECT

01:38PM 21 OF WHETHER THE 2,000 STORES WERE WELL EXPERIENCE STORES OR

01:38PM 22 WALGREENS STORES?

01:38PM 23 A. YES, SIR.

01:38PM 24 Q. RIGHT. BUT I'D LIKE TO POINT YOU TO OTHER TESTIMONY THAT

01:38PM 25 MR. SCHENK DID NOT REVIEW WITH YOU, AND THAT IS IF YOU TAKE A

01:38PM 1 LOOK AT, IT WOULD BE IN THE SECOND BINDER, THE SAME ONE YOU
01:38PM 2 WERE LOOKING AT WITH MR. SCHENK, AND IT'S EXHIBIT 28407. OKAY?
01:38PM 3 A. YES, SIR.
01:38PM 4 Q. AND IF YOU GO TO THE PAGE 3670.
01:39PM 5 AND YOU SEE ON THAT PAGE THERE'S A DISCUSSION ABOUT THE
01:39PM 6 GOAL OF 500 STORES VERSUS 2,000 OR 2,500 STORES.
01:39PM 7 DO YOU SEE THAT?
01:39PM 8 A. YES, SIR.
01:39PM 9 Q. OKAY.
01:39PM 10 YOUR HONOR, I'D LIKE TO PUT UP ON THE SCREEN AN EXHIBIT
01:39PM 11 THAT WE HAVE NUMBERED 28407A. AND IT WOULD BE PAGE 3670 OF
01:39PM 12 EXHIBIT 28407, LINE 7, THROUGH 3671 AT LINE 23.
01:40PM 13 (PAUSE IN PROCEEDINGS.)
01:40PM 14 MR. SCHENK: OBJECTION. WE DIRECT THE COURT TO THE
01:40PM 15 QUESTION THAT IS BEING ASKED OF MR. JHAVERI.
01:40PM 16 (PAUSE IN PROCEEDINGS.)
01:40PM 17 THE COURT: IS THIS RESPONSIVE TO MR. SCHENK'S
01:41PM 18 QUESTION?
01:41PM 19 MR. COOPERSMITH: DIRECTLY, YOUR HONOR. IT TALKS
01:41PM 20 ABOUT WHAT THE GOAL WAS IN AUGUST OF 2014, HOW MANY STORES
01:41PM 21 BASED ON MR. JHAVERI'S TESTIMONY.
01:41PM 22 AND I POINT THE COURT IN PARTICULAR TO PAGE 3671, LINES 19
01:41PM 23 THROUGH 23.
01:41PM 24 THE COURT: THE QUESTION IS AT LINE 5.
01:41PM 25 MR. COOPERSMITH: OF 3670? THAT'S THE INITIAL

01:41PM 1 QUESTION, YES, YOUR HONOR.

01:41PM 2 THE COURT: 3671.

01:41PM 3 MR. COOPERSMITH: THAT IS THAT QUESTION ASKED AT

01:41PM 4 THAT PAGE, BUT THE REST OF IT, GOING BACK TO 3670 ON LINE 7, IS

01:41PM 5 ALL OF THE TOPIC THAT THEY'RE DISCUSSING.

01:41PM 6 BUT YOUR HONOR IS RIGHT, THERE IS A QUESTION ON LINE 5 OF

01:42PM 7 THAT 3671.

01:42PM 8 (PAUSE IN PROCEEDINGS.)

01:42PM 9 THE COURT: I'M CERTAIN THIS MATCHES EXACTLY WHAT

01:42PM 10 WAS ASKED, BUT I'M GOING TO ALLOW IT TO COME IN.

01:42PM 11 I DON'T WANT THIS TO GET A 403. I THINK WE'RE SPENDING A

01:42PM 12 LOT OF TIME ON THIS THAT MAY NOT BE NECESSARY AND THAT MIGHT

01:42PM 13 OTHERWISE MIGHT CONFUSE THE JURY.

01:42PM 14 BUT I'LL ALLOW THIS TO COME IN.

01:42PM 15 MR. COOPERSMITH: OKAY. THANK YOU, YOUR HONOR.

01:43PM 16 IF WE CAN PUT UP THAT TESTIMONY.

01:43PM 17 Q. DO YOU HAVE IT IN FRONT OF YOU, MR. JHAVERI?

01:43PM 18 A. YES, SIR.

01:43PM 19 Q. JUST SO YOU CAN FOLLOW ALONG.

01:43PM 20 LET'S START WITH LINE 7 ON PAGE 3670.

01:43PM 21 AND THE QUESTION YOU ARE ASKED IS, "OKAY. LET ME ASK YOU

01:43PM 22 TO LOOK ON PAGE 9, WHICH IS A CONTINUATION OF THAT SECTION.

01:43PM 23 AND I'D ASK YOU TO LOOK AT THE BULLET POINT THAT BEGINS,

01:43PM 24 INITIAL GOAL FOR FISCAL YEAR WAS 500 STORES."

01:43PM 25 DO YOU SEE THAT?

01:43PM 1 A. YES, SIR.

01:43PM 2 Q. AND ACTUALLY, JUST TO BE CLEAR, THE QUESTION IS REFERRING

01:43PM 3 TO THE PARTNERSHIP MEETING MINUTES, WHICH IS EXHIBIT 1884.

01:43PM 4 A. THAT'S CORRECT.

01:43PM 5 Q. RIGHT?

01:43PM 6 AND, IN FACT, THAT'S THE DOCUMENT THAT HAS THE CHART THAT

01:43PM 7 YOU REVIEWED WITH MR. SCHENK DURING HIS REDIRECT?

01:43PM 8 A. YES, SIR.

01:43PM 9 Q. OKAY. AND HE ONLY SHOWED YOU THE CHART; RIGHT?

01:43PM 10 BUT IN THAT SAME EXHIBIT, IT TALKS ABOUT REDEFINING THE

01:43PM 11 GOAL WHEN THE INITIAL GOAL HAD BEEN 500; CORRECT?

01:43PM 12 A. CORRECT.

01:43PM 13 Q. AND THEN WHEN I WAS QUESTIONING YOU A COUPLE OF WEEKS AGO,

01:44PM 14 WE HAD LOOKED AT A MAY 2014 PARTNERSHIP MEETING MINUTES WHERE

01:44PM 15 THE GOAL AT THAT POINT IN MAY HAD BEEN 500 STORES.

01:44PM 16 DO YOU REMEMBER THAT?

01:44PM 17 A. YES.

01:44PM 18 Q. AND THEN IN THE AUGUST 6TH PARTNERSHIP MEETING MINUTES,

01:44PM 19 THE GOAL WAS GOING TO BE REDEFINED; RIGHT?

01:44PM 20 A. CORRECT.

01:44PM 21 Q. OKAY. AND SO THE QUESTION WE'RE LOOKING AT, JUST TO

01:44PM 22 PROVIDE THE CONTEXT, IS THE INITIAL GOAL WAS REFERRING TO THAT

01:44PM 23 EARLIER MAY PERIOD WHERE THE GOAL WAS 500 STORES; CORRECT?

01:44PM 24 A. THE INITIAL GOAL FOR THAT FISCAL YEAR WAS 500.

01:44PM 25 Q. RIGHT.

01:44PM 1 A. RIGHT.

01:44PM 2 Q. AND IT WAS GOING TO BE REDEFINED AT THIS PARTNERSHIP

01:44PM 3 MEETING IN AUGUST; RIGHT?

01:44PM 4 A. CORRECT.

01:44PM 5 Q. OKAY. AND LET'S JUST GO ON.

01:44PM 6 AND THEN LINE 11, "DO YOU SEE THAT?"

01:44PM 7 AND YOU SAY, "YES, SIR."

01:44PM 8 "QUESTION: AND UNDERNEATH THAT, IT SAYS WE NEED TO

01:44PM 9 REDEFINE THIS GOAL."

01:44PM 10 DO YOU SEE THAT?

01:44PM 11 A. YES, SIR.

01:44PM 12 Q. AND THEN YES.

01:44PM 13 "QUESTION: AND THEN UNDER THAT THERE'S A BULLET POINT

01:45PM 14 THAT TALKS ABOUT A NATIONWIDE GOAL."

01:45PM 15 DO YOU SEE THAT?

01:45PM 16 A. YES.

01:45PM 17 Q. AND THEN THAT INDICATES THE GOAL -- A GOAL MIGHT BE 2,000

01:45PM 18 TO 2,500 STORES NATIONWIDE.

01:45PM 19 DO YOU SEE THAT?

01:45PM 20 YES?

01:45PM 21 A. YES.

01:45PM 22 Q. I WILL START AGAIN.

01:45PM 23 I'M LOOKING AT LINE 25 ON PAGE 3670, EXHIBIT 28407.

01:45PM 24 THE QUESTION YOU'RE ASKED IS, "AND DO YOU RECALL IN THE

01:45PM 25 ORIGINAL AGREEMENT, OR ACTUALLY IN THE AGREEMENT THAT WAS

01:45PM 1 SIGNED AT THE END OF DECEMBER 2013, THE PROPOSAL WAS THAT THERE
01:45PM 2 WOULD BE 3,000 STORES ROLLED OUT?
01:45PM 3 "DO YOU RECALL THAT?"
01:45PM 4 AND YOUR ANSWER IS, "I DON'T RECALL THAT, BUT, YES."
01:45PM 5 DO YOU SEE THAT?
01:45PM 6 A. YES.
01:45PM 7 Q. AND THEN THE QUESTION IS, "OKAY. SO THE PROJECTION OF
01:45PM 8 2,000 TO 2,500 STORES WAS A REDUCTION IN WHAT WAS DESCRIBED IN
01:45PM 9 THAT DECEMBER 2013 AGREEMENT; CORRECT?"
01:46PM 10 AND YOUR ANSWER IS AS FOLLOWS: "IF THE NUMBER WAS
01:46PM 11 REDUCED, YES.
01:46PM 12 "AGAIN, AS I MENTIONED EARLIER, WHENEVER DISCUSSIONS OF
01:46PM 13 LAUNCH ARE HAD, WE LOOK AT ALL OF THE VARIABLES OF BOTH
01:46PM 14 PARTIES, IN THIS CASE THERANOS AS WELL AS WALGREENS, AND WE
01:46PM 15 CHANGE THOSE NUMBERS BASED ON WHAT WE'RE SEEING, THE RESULTS
01:46PM 16 THAT WE'RE EXPERIENCING, THE PATIENT EXPERIENCE THAT YOU TALKED
01:46PM 17 ABOUT THAT WE ARE SEEING.
01:46PM 18 "SO WHAT YOU ARE SEEING IS REALLY THOSE TYPES OF INPUTS
01:46PM 19 GOING INTO WHAT THE NUMBER OF LAUNCHES SHOULD BE.
01:46PM 20 "NATIONWIDE LAUNCH? YES. WE HAD EVERY INTENTION AS
01:46PM 21 WALGREENS TO LAUNCH NATIONWIDE.
01:46PM 22 "BUT AGAIN, HOW WE LAUNCH, WHAT WE DO, HOW WAS WE GO IS
01:46PM 23 DEPENDENT ON MANY, MANY VARIABLES THAT I SPOKE ABOUT EARLIER."
01:46PM 24 DO YOU SEE THAT?
01:46PM 25 A. YES, SIR.

01:46PM 1 Q. AND THEN GOING ON LINE 21 ON PAGE 3671, IT'S ACTUALLY
01:46PM 2 PAGE 134 OF THE EXHIBIT IN THOSE NUMBERS, LINE 21, THE QUESTION
01:46PM 3 YOU WERE ASKED IS, "OKAY. BUT AS OF AUGUST 2014, THIS 2500 WAS
01:47PM 4 YOUR PROJECTION; CORRECT?"
01:47PM 5 DO YOU SEE THAT?
01:47PM 6 A. YES, SIR.
01:47PM 7 Q. AND YOUR ANSWER WAS, "CORRECT."
01:47PM 8 AM I READING THAT CORRECTLY?
01:47PM 9 A. YOU ARE.
01:47PM 10 Q. AND THAT WAS TESTIMONY THAT YOU GAVE UNDER OATH IN A PRIOR
01:47PM 11 PROCEEDING; RIGHT?
01:47PM 12 A. YES.
01:47PM 13 Q. AND MR. SCHENK DIDN'T SHOW YOU THAT ON HIS REDIRECT, DID
01:47PM 14 HE?
01:47PM 15 A. RIGHT NOW, NO.
01:47PM 16 Q. MR. JHAVERI, LET'S GO TO A DIFFERENT TOPIC.
01:47PM 17 MR. SCHENK ASKED YOU SOME QUESTIONS ABOUT PERCENTAGE OF
01:47PM 18 VENIPUNCTURE NUMBERS.
01:47PM 19 DO YOU REMEMBER THAT?
01:47PM 20 A. YES, SIR.
01:47PM 21 Q. AND HE TALKED ABOUT SOME OF THE CUSTOMER FEEDBACK.
01:47PM 22 DO YOU REMEMBER?
01:47PM 23 A. YES, SIR.
01:47PM 24 Q. AND THAT HE ASKED, I THINK, THE QUESTION ABOUT WHETHER THE
01:47PM 25 CUSTOMER FEEDBACK THAT WAS ON A PARTICULAR PAGE HE SHOWED YOU

01:47PM 1 WAS ALL ABOUT PRICE.

01:48PM 2 DO YOU REMEMBER THAT QUESTION?

01:48PM 3 A. CORRECT, YES.

01:48PM 4 Q. AND I THINK YOU SAID YES.

01:48PM 5 A. YES.

01:48PM 6 Q. BUT, ACTUALLY, WE TALKED EARLIER ABOUT SOME BAR GRAPHS

01:48PM 7 WHERE IT TRACKED SOME PATIENTS EVERY SINGLE TIME AND HOW MANY

01:48PM 8 PATIENTS RESPONDED WITH 1, 2, 3, 4, 5'S BASED ON THEIR RATINGS

01:48PM 9 OF THE SERVICE; RIGHT?

01:48PM 10 A. WE DID.

01:48PM 11 Q. AND ONE OF THOSE BAR GRAPHS HAD TO DO WITH SAMPLE

01:48PM 12 COLLECTIONS; RIGHT?

01:48PM 13 A. YES.

01:48PM 14 Q. AND YOU REMEMBER OVERWHELMINGLY PATIENT WERE PUTTING 5'S,

01:48PM 15 THE BEST RATING FOR SAMPLE COLLECTION; RIGHT?

01:48PM 16 A. YES.

01:48PM 17 Q. AND THEY WERE NOT OVERWHELMINGLY SAYING NO, WE WERE REALLY

01:48PM 18 UPSET BECAUSE WE DIDN'T GET FINGERSTICK; RIGHT?

01:48PM 19 A. THAT'S THE ASSUMPTION BASED ON THE METRICS.

01:48PM 20 Q. OKAY. LET'S TALK ABOUT A DIFFERENT TOPIC, AND THAT IS,

01:49PM 21 MR. SCHENK ASKED YOU SOME QUESTIONS ABOUT THE JOHNS HOPKINS

01:49PM 22 REPORT.

01:49PM 23 A. YES, SIR.

01:49PM 24 Q. AND HE ASKED YOU SOME QUESTIONS IN PARTICULAR ABOUT

01:49PM 25 WHETHER THE DISCLAIMER AT THE BOTTOM WAS AN ISSUE.

01:49PM 1 DO YOU REMEMBER THOSE QUESTIONS?

01:49PM 2 A. YES.

01:49PM 3 Q. AND THE DISCLAIMER SAID SOMETHING ABOUT HOW THIS WAS

01:49PM 4 INFORMATION TRANSMITTED FOR THE USE OF WALGREENS ONLY.

01:49PM 5 DO YOU REMEMBER THAT?

01:49PM 6 A. YES, SIR.

01:49PM 7 Q. AND IT WENT ON ABOUT WHETHER JOHNS HOPKINS WAS ENDORSING A

01:49PM 8 PRODUCT OR SERVICE?

01:49PM 9 A. YES, I REMEMBER THAT.

01:49PM 10 Q. OKAY. SO LET'S JUST START WITH THE EXHIBIT THAT

01:49PM 11 MR. SCHENK SHOWED YOU, WHICH IS 20532.

01:49PM 12 I BELIEVE THAT'S IT. RIGHT.

01:50PM 13 SO THIS IS EXHIBIT 20532 THAT WE'RE LOOKING AT, AND IT'S

01:50PM 14 THE THIRD AND FOURTH PAGES.

01:50PM 15 SO WE'RE AT THE THIRD PAGE NOW UP ON THE SCREEN.

01:50PM 16 AND PUTTING ASIDE THE DISCLAIMER AT THE VERY BOTTOM, IN

01:50PM 17 FACT, IF WE LOOK AT THE VERY BOTTOM OF THE PAGE, DO YOU SEE

01:50PM 18 THAT THERE'S THAT -- I'M SORRY. IT'S THE DISCLAIMER ON PAGE 4

01:50PM 19 THAT IS BEING HIGHLIGHTED NOW.

01:50PM 20 THAT'S A DISCLAIMER THAT MR. SCHENK ASKED YOU ABOUT?

01:50PM 21 A. YES, SIR.

01:50PM 22 Q. OKAY. AND NOTWITHSTANDING THE DISCLAIMER ABOUT NOT

01:50PM 23 ENDORSING, THE TEXT OF THE REPORT HAS, FOR EXAMPLE, NO MAJOR

01:50PM 24 WEAKNESSES WERE IDENTIFIED; RIGHT?

01:50PM 25 A. YES.

01:50PM 1 Q. RIGHT. SO WHATEVER THE DISCLAIMER SAYS, JOHNS HOPKINS
01:50PM 2 PHYSICIANS ARE GIVING THEIR VIEWS ABOUT THE THERANOS
01:50PM 3 TECHNOLOGY; RIGHT?
01:50PM 4 MR. SCHENK: OBJECTION. CALLS FOR SPECULATION.
01:51PM 5 THE COURT: WITHOUT A FOUNDATION.
01:51PM 6 BY MR. COOPERSMITH:
01:51PM 7 Q. OKAY. JUST STICKING TO THE REPORT ITSELF, DO YOU SEE THAT
01:51PM 8 ON THE FIRST PAGE THERE ARE JOHNS HOPKINS PHYSICIANS ON THE
01:51PM 9 FIRST PAGE?
01:51PM 10 A. YES.
01:51PM 11 Q. AND IT HAS THREE OF THEM LISTED THERE?
01:51PM 12 A. YES.
01:51PM 13 Q. OKAY. AND THEN IF YOU GO TO PAGE 4, YOU SEE IT SAYS KEY
01:51PM 14 FINDINGS?
01:51PM 15 A. I DO.
01:51PM 16 Q. AND IT SAYS, "BASED ON THIS EVALUATION, THE CONSENSUS OF
01:51PM 17 THE HOPKINS TEAM WAS AS FOLLOWS"; RIGHT?
01:51PM 18 A. YES.
01:51PM 19 Q. AND IT GIVES BULLET POINTS, BUT WE DISCUSSED THEM A COUPLE
01:51PM 20 WEEKS AGO; RIGHT?
01:51PM 21 A. YES.
01:51PM 22 Q. AND GOING TO THE DISCLAIMER, IT WAS -- THERE WAS A
01:51PM 23 RELATIONSHIP BETWEEN WALGREENS AND JOHNS HOPKINS; RIGHT?
01:51PM 24 A. WE DID HAVE A BUSINESS RELATIONSHIP, YES.
01:51PM 25 Q. RIGHT. AND THAT'S WHY WALGREENS USED JOHNS HOPKINS TO

01:51PM 1 HELP EVALUATE THIS TECHNOLOGY; RIGHT?

01:51PM 2 A. CORRECT.

01:51PM 3 Q. OKAY. AND JUST ON THE POINT OF, YOU KNOW, THE DISCLAIMER

01:52PM 4 AND TRANSMITTING INFORMATION OR WHETHER IT WAS FOR THE SOLE

01:52PM 5 BENEFIT OF WALGREENS, I'D LIKE TO HAVE YOU TAKE A LOOK AT

01:52PM 6 EXHIBIT 20533.

01:52PM 7 I'M SORRY, 20553. 20553.

01:52PM 8 AND DO YOU SEE THIS IS AN EMAIL FROM --

01:52PM 9 AND IT'S NOT IN EVIDENCE, YOUR HONOR.

01:52PM 10 MR. JHAVERI, WE'LL JUST DISCUSS IT FOR A MINUTE, BUT DO

01:52PM 11 YOU SEE IT'S AN EMAIL FROM MR. JAY ROSAN TO ELIZABETH HOLMES

01:52PM 12 AND OTHERS?

01:52PM 13 A. SIR, I JUST NEED TO FIND IT.

01:52PM 14 Q. OH, OF COURSE. I'M SORRY.

01:53PM 15 (PAUSE IN PROCEEDINGS.)

01:53PM 16 THE WITNESS: I HAVE IT.

01:53PM 17 BY MR. COOPERSMITH:

01:53PM 18 Q. OKAY. THANK YOU.

01:53PM 19 WE'RE EXHIBIT 20553.

01:53PM 20 DO YOU SEE IN THE MIDDLE THERE'S AN EMAIL FROM JAY ROSAN

01:53PM 21 TO ELIZABETH HOLMES AND SOME OTHER PEOPLE WERE COPIED?

01:53PM 22 A. YES, SIR.

01:53PM 23 Q. AND THEN ABOVE THAT YOU SEE THAT THERE'S A FORWARDING OF

01:53PM 24 THE SAME EMAIL FROM ELIZABETH HOLMES TO SUNNY BALWANI AND

01:53PM 25 DANIEL YOUNG?

01:53PM 1 A. YES, I DO.

01:53PM 2 Q. AND WE TALKED ABOUT JAY ROSAN; RIGHT?

01:53PM 3 A. YES.

01:53PM 4 Q. HE WAS THE MEDICAL DOCTOR --

01:53PM 5 A. YES.

01:53PM 6 Q. -- WHO WORKED FOR WALGREENS; RIGHT?

01:53PM 7 A. CORRECT.

01:53PM 8 Q. AND HE WAS THE VICE PRESIDENT OF HEALTH INNOVATION?

01:53PM 9 A. THAT'S CORRECT.

01:53PM 10 Q. OKAY. AND HE WAS SENDING THIS EMAIL TO MS. HOLMES; RIGHT?

01:54PM 11 A. YES, ACCORDING TO THIS.

01:54PM 12 Q. RIGHT. WITH AN ATTACHMENT?

01:54PM 13 A. YES.

01:54PM 14 MR. COOPERSMITH: YOUR HONOR, WE OFFER 20553. I

01:54PM 15 THINK THE GOVERNMENT OPENED THE DOOR TO THIS BY TALKING ABOUT

01:54PM 16 THE DISCLAIMER INFORMATION THAT THEY HIGHLIGHTED WITH

01:54PM 17 MR. JHAVERI.

01:54PM 18 MR. SCHENK: NO OBJECTION.

01:54PM 19 THE COURT: IT'S ADMITTED.

01:54PM 20 (DEFENDANT'S EXHIBIT 20553 WAS RECEIVED IN EVIDENCE.)

01:54PM 21 MR. COOPERSMITH: YES. MAY WE PUBLISH IT?

01:54PM 22 THE COURT: YES.

01:54PM 23 BY MR. COOPERSMITH:

01:54PM 24 Q. SO YOU SEE, MR. JHAVERI, THERE WAS THAT EMAIL THAT WE JUST

01:54PM 25 TALKED ABOUT FROM JAY ROSAN?

01:54PM 1 A. YES.

01:54PM 2 Q. AND THEN THERE'S ABOVE THAT YOU SEE THE FORWARDING OF THE

01:54PM 3 EMAIL TO --

01:54PM 4 A. I DO.

01:54PM 5 Q. AND THAT'S ON SEPTEMBER 10TH, 2010; RIGHT?

01:54PM 6 A. CORRECT.

01:54PM 7 Q. AND THEN IF YOU GO TO THE ATTACHMENT, THAT'S PAGE 2 OF THE

01:54PM 8 EXHIBIT, YOU SEE THAT'S THE SAME REPORT, SUMMARY OF THE

01:55PM 9 HOLMES/WALGREENS/THERANOS MEETING THAT WE WERE JUST LOOKING AT?

01:55PM 10 A. YES.

01:55PM 11 Q. AND THEN IF YOU GO TO THE NEXT PAGE, IT'S THE SAME SECOND

01:55PM 12 PAGE AS WELL WITH THE KEY FINDINGS AND EVEN THE DISCLAIMER;

01:55PM 13 RIGHT?

01:55PM 14 A. CORRECT.

01:55PM 15 Q. SO BASED ON WHAT WE'RE SEEING IN FRONT OF US,

01:55PM 16 NOTWITHSTANDING THE DISCLAIMER, SOMEONE AT WALGREENS, A GUY

01:55PM 17 NAMED JAY ROSAN, ACTUALLY TRANSMITTED THE INFORMATION TO

01:55PM 18 THERANOS; RIGHT?

01:55PM 19 A. RIGHT, ACCORDING TO THIS.

01:55PM 20 Q. ALL RIGHT. WHILE WE'RE ON THE SUBJECT OF JAY ROSAN, I'D

01:55PM 21 LIKE TO HAVE YOU TAKE A LOOK AT EXHIBIT 20442.

01:56PM 22 A. I HAVE IT.

01:56PM 23 Q. OKAY. AND DO YOU SEE THAT EXHIBIT 20442 IS AN EMAIL FROM

01:56PM 24 PATTY HAWORTH AT THE TOP TO DANIEL YOUNG?

01:56PM 25 A. I DO.

01:56PM 1 Q. AND THERE'S A COPY TO DR. ROSAN FROM WALGREENS AND
01:56PM 2 SUNNY BALWANI.
01:56PM 3 DO YOU SEE THAT?
01:56PM 4 A. YES.
01:56PM 5 Q. AND THIS RELATES TO -- THE SUBJECT LINE IS ASTHMA TEST,
01:56PM 6 PATTY HAWORTH?
01:56PM 7 A. YES.
01:56PM 8 Q. AND WE TALKED EARLIER ABOUT PATTY HAWORTH; RIGHT?
01:56PM 9 A. YES, WE DID.
01:56PM 10 Q. SHE WAS THE EMPLOYEE AT WALGREENS WHO WAS RESPONSIBLE FOR
01:56PM 11 KEEPING THE PARTNERSHIP MEETING MINUTES?
01:56PM 12 A. HER TITLE WAS THE PROJECT MANAGER.
01:56PM 13 Q. AND YOU SEE THE EMAIL IS DATED IN APRIL OF 2011?
01:56PM 14 A. YES.
01:56PM 15 Q. OKAY.
01:57PM 16 YOUR HONOR, WE OFFER EXHIBIT 20442?
01:57PM 17 MR. SCHENK: OBJECTION. BEYOND THE SCOPE.
01:57PM 18 MR. COOPERSMITH: WE THINK THAT, YOUR HONOR, WITH
01:57PM 19 THAT OBJECTION, IT WAS MR. SCHENK HAD MADE A POINT ABOUT
01:57PM 20 DR. ROSAN, AND I THINK THIS IS RELEVANT TO THE ISSUES ABOUT
01:57PM 21 WHAT WALGREENS WAS DOING AND WHAT THEY HAD.
01:57PM 22 IN FACT, MR. SCHENK ASKED A QUESTION ABOUT THE ACCURACY OF
01:57PM 23 THE DEVICES, AND THE TOPICS ADDRESSED IN THE EMAIL GO DIRECTLY
01:57PM 24 TO WALGREENS'S ABILITY TO OBSERVE THAT BEFORE THEY STARTED
01:57PM 25 LAUNCHING WITH THERANOS.

01:57PM 1 THE COURT: THIS IS IN 2011?

01:58PM 2 MR. COOPERSMITH: YES, YOUR HONOR.

01:58PM 3 THE COURT: AND THIS IS ABOUT MS. HAWORTH.

01:58PM 4 WAS SHE TALKED ABOUT IN PREVIOUS TESTING?

01:58PM 5 MR. COOPERSMITH: OH, YES. SHE WAS THE ONE WHO KEPT

01:58PM 6 THE PARTNERSHIP MEETING MINUTES.

01:58PM 7 THE COURT: I KNOW SHE WAS.

01:58PM 8 BUT WAS THERE DISCUSSION ABOUT HER TESTING IN ANY WAY? I

01:58PM 9 DON'T RECALL THAT.

01:58PM 10 MR. COOPERSMITH: YOU MEAN DURING REDIRECT,

01:58PM 11 YOUR HONOR?

01:58PM 12 THE COURT: RIGHT.

01:58PM 13 MR. COOPERSMITH: I DON'T REMEMBER A REFERENCE TO

01:58PM 14 MS. HAWORTH IN PARTICULAR.

01:58PM 15 BUT WHAT MR. SCHENK ASKED WERE QUESTIONS ABOUT THE

01:58PM 16 ACCURACY AND RELIABILITY OF THE TESTING, AND THIS GOES DIRECTLY

01:58PM 17 TO WALGREENS'S OPPORTUNITY TO OBSERVE THAT FIRST HAND.

01:58PM 18 (PAUSE IN PROCEEDINGS.)

01:58PM 19 THE COURT: I'LL ALLOW IT.

01:58PM 20 MR. COOPERSMITH: THANK YOU, YOUR HONOR.

01:58PM 21 (DEFENDANT'S EXHIBIT 20442 WAS RECEIVED IN EVIDENCE.)

01:59PM 22 BY MR. COOPERSMITH:

01:59PM 23 Q. MR. JHAVERI, TAKE A LOOK AT EXHIBIT 20442.

01:59PM 24 AND YOU SEE, IF WE GO TO THE EARLIEST EMAIL IN TIME,

01:59PM 25 THERE'S AN EMAIL FROM PATTY HAWORTH TO JAY ROSAN WITH A COPY TO

01:59PM 1 BARBARA FLOHR.

01:59PM 2 DO YOU SEE THAT?

01:59PM 3 A. YES.

01:59PM 4 Q. AND SHE SAYS, "DR. JAY,

01:59PM 5 "I JUST DID A TEST ON MYSELF TODAY TO MAKE SURE THE

01:59PM 6 MACHINE IS STILL WORKING. THE I.D.," AND IT HAS AN I.D.

01:59PM 7 NUMBER.

01:59PM 8 DO YOU SEE THAT?

01:59PM 9 A. YES.

01:59PM 10 Q. AND IT SAYS, "IT WAS MY ASTHMA TEST. MY CELL NUMBER IS

01:59PM 11 LISTED BELOW.

01:59PM 12 "ALSO PLEASE LET ME KNOW IF YOU NEED ANY INFORMATION ABOUT

01:59PM 13 THIS."

01:59PM 14 AND THEN THERE'S A RESPONSE FROM JAY ROSAN RIGHT ABOVE

01:59PM 15 THAT, AND HE'S SENDING IT TO DANIEL YOUNG WITH A COPY TO

01:59PM 16 MS. HAWORTH.

01:59PM 17 AND HE SAYS, "PATTY HAWORTH, DAN, I DID NOT GET ANY

01:59PM 18 RESULTS ON THIS. DID YOU GET THIS AND IF NOT ARE YOU GETTING A

02:00PM 19 HEARTBEAT?"

02:00PM 20 SO DR. ROSAN IS ASKING DR. YOUNG ABOUT THAT; RIGHT?

02:00PM 21 A. YES.

02:00PM 22 Q. ABOVE THAT, A FEW DAYS LATER MS. HAWORTH WRITES, "HI

02:00PM 23 DANIEL.

02:00PM 24 "ANY NEWS?"

02:00PM 25 DO YOU SEE THAT?

02:00PM 1 A. YEP.

02:00PM 2 Q. AND THEN HE RESPONDS, "THESE DATA WERE SENT TO DR. JAY ON

02:00PM 3 TUESDAY. DR. JAY HAS CONFIRMED THAT HE RECEIVED THE DATA.

02:00PM 4 "PLEASE LET ME KNOW IF YOU HAVE ANY FURTHER QUESTIONS."

02:00PM 5 DO YOU SEE THAT?

02:00PM 6 A. I DO.

02:00PM 7 Q. AND THEN MS. HAWORTH WRITES, "NO FURTHER QUESTIONS. JUST

02:00PM 8 WANTED TO MAKE SURE THE DEVICE WAS WORKING AS EXPECTED.

02:00PM 9 "THANK YOU FOR YOUR QUICK RESPONSE."

02:00PM 10 SO DR. ROSAN AND MS. HAWORTH, THEY ACTUALLY HAD A THERANOS

02:00PM 11 DEVICE THAT THEY WERE USING FOR MS. HAWORTH TO RUN TESTS ON

02:00PM 12 HERSELF AT WALGREENS; RIGHT?

02:01PM 13 A. ACCORDING TO THIS.

02:01PM 14 AGAIN, I HAVE NO KNOWLEDGE OF THIS. I WAS NOT PART OF

02:01PM 15 THIS.

02:01PM 16 Q. OKAY. BUT THAT'S WHAT THE EMAIL SAYS?

02:01PM 17 A. THAT'S WHAT THE EMAIL SAYS.

02:01PM 18 Q. OKAY.

02:01PM 19 (PAUSE IN PROCEEDINGS.)

02:01PM 20 MR. COOPERSMITH: NOTHING FURTHER, YOUR HONOR.

02:01PM 21 THE COURT: ANYTHING FURTHER?

02:02PM 22 MR. SCHENK: NO, YOUR HONOR.

02:02PM 23 THE COURT: MAY THIS WITNESS BE EXCUSED?

02:02PM 24 MR. COOPERSMITH: YES, YOUR HONOR.

02:02PM 25 MR. SCHENK: YES, YOUR HONOR.

02:02PM 1 THE COURT: YOU MAY BE EXCUSED.

02:02PM 2 DOES THE GOVERNMENT HAVE ANOTHER WITNESS?

02:02PM 3 IS THIS MS. BENNETT?

02:02PM 4 ALL RIGHT. FOLKS, WHY DON'T YOU STAND UP AND STRETCH FOR

02:02PM 5 A MOMENT.

02:02PM 6 (STRETCHING.)

02:03PM 7 THE COURT: THANK YOU. WE ARE ON THE RECORD AGAIN.

02:03PM 8 MS. BENNETT, DR. BENNETT IS ON THE STAND.

02:03PM 9 YOU WOULD LIKE TO CONTINUE WITH YOUR EXAMINATION?

02:03PM 10 MR. CAZARES: YES, YOUR HONOR.

02:03PM 11 THE COURT: PLEASE PROCEED.

02:03PM 12 MR. CAZARES: THANK YOU, YOUR HONOR.

02:03PM 13 **CROSS-EXAMINATION (RESUMED)**

02:03PM 14 BY MR. CAZARES:

02:03PM 15 Q. GOOD AFTERNOON, MS. BENNETT.

02:03PM 16 A. GOOD AFTERNOON.

02:03PM 17 Q. SO I WANT TO KIND OF RETURN BACK TO KIND OF THE BIGGER

02:04PM 18 PICTURE ABOUT SOME OF YOUR TESTIMONY FROM YESTERDAY AND GET

02:04PM 19 BACK TO -- SO BEGINNING IN SEPTEMBER OF 2015, YOURSELF AND

02:04PM 20 MR. YAMAMOTO VISITED THERANOS'S LABORATORY TO BEGIN A

02:04PM 21 RECERTIFICATION SURVEY; CORRECT?

02:04PM 22 A. YES, RECERTIFICATION, AND A COMPLAINT.

02:04PM 23 Q. YES, THERE WAS A COMPLAINT YOU MENTIONED.

02:04PM 24 AND THAT SURVEY CONTINUED WITH A FOLLOW-UP VISIT IN

02:04PM 25 NOVEMBER OF 2015?

02:04PM 1 A. IT WAS A CONTINUATION OF THE SAME SURVEY.

02:04PM 2 Q. AND REVIEW AND EXAMINATION OF DOCUMENTATION CONTINUED INTO

02:04PM 3 JANUARY OF 2016; CORRECT?

02:04PM 4 A. DECEMBER OR JANUARY, YES.

02:04PM 5 Q. OKAY. AND THEN THE REPORT WAS ULTIMATELY ISSUED IN

02:04PM 6 JANUARY OF 2016; CORRECT?

02:04PM 7 A. I BELIEVE IT WAS JANUARY.

02:04PM 8 Q. OKAY. AND WHEN YOU PERFORMED THE SURVEY, WHAT YOU WERE

02:04PM 9 LOOKING FOR IN THIS SURVEY OF THERANOS'S LABORATORY WAS

02:05PM 10 EVIDENCE OF COMPLIANCE WITH THE CLIA REGULATIONS; CORRECT?

02:05PM 11 A. YES.

02:05PM 12 Q. SO YOU WERE LOOKING TO ENSURE THAT THE LABORATORY WAS

02:05PM 13 FOLLOWING THE RULES; IS THAT FAIR?

02:05PM 14 A. THAT THEY WERE MEETING THE REQUIREMENTS, YES.

02:05PM 15 Q. NOW, PRIOR TO BEGINNING THE SURVEY, YOU DESCRIBED

02:05PM 16 YESTERDAY SOME PRELIMINARY WORK; IS THAT RIGHT?

02:05PM 17 A. YES.

02:05PM 18 Q. AND SOME OF THAT WORK INCLUDED LOOKING BACK AT A PRIOR

02:05PM 19 SURVEY THAT TOOK PLACE A COUPLE OF YEARS PRIOR IN DECEMBER OF

02:05PM 20 2013; CORRECT?

02:05PM 21 A. YES.

02:05PM 22 Q. YOU ALSO OBTAINED SOME INFORMATION REGARDING THERANOS,

02:05PM 23 INCLUDING THEIR PROFICIENCY TESTING RECORDS OR DATA; CORRECT?

02:05PM 24 A. I PULLED THE REPORTS ABOUT THE PROFICIENCY TESTING.

02:05PM 25 Q. OKAY. AND YOU REQUESTED INFORMATION FROM THERANOS, OR AT

02:05PM 1 LEAST YOURSELF OR MR. YAMAMOTO DID; CORRECT?

02:05PM 2 A. PRIOR TO THE SURVEY? I'M NOT SURE.

02:05PM 3 Q. DO YOU REMEMBER YESTERDAY WITH MR. LEACH YOU WERE SHOWN

02:06PM 4 SOME LISTS OF TESTS DURING YOUR DIRECT EXAMINATION?

02:06PM 5 DO YOU REMEMBER THAT?

02:06PM 6 A. YES.

02:06PM 7 Q. AND ONE OF THOSE WAS DATED AROUND JUNE OF 2015.

02:06PM 8 DO YOU REMEMBER THAT?

02:06PM 9 A. OH, OKAY. SURE, YES.

02:06PM 10 Q. AND THAT IDENTIFIED LDT'S VERSUS FDA APPROVED.

02:06PM 11 DO YOU REMEMBER THAT?

02:06PM 12 A. I REMEMBER THE LIST. I THOUGHT WE GOT THAT ON SURVEY.

02:06PM 13 Q. OKAY. BUT ULTIMATELY YOU DID RECEIVE THAT BEFORE THE

02:06PM 14 SURVEY COMPLETED.

02:06PM 15 FAIR ENOUGH?

02:06PM 16 A. YES.

02:06PM 17 Q. OKAY. NOW, IN THE COURSE OF THE SURVEY, YOU OBVIOUSLY

02:06PM 18 REQUESTED INFORMATION FROM THE LAB WHILE YOU WERE DOING THE

02:06PM 19 WORK; CORRECT?

02:06PM 20 A. YES.

02:06PM 21 Q. AND YOU DESCRIBED SOME OF THAT BACK AND FORTH WITH

02:06PM 22 INDIVIDUALS WITHIN THE LAB, INCLUDING LANGLY GEE.

02:06PM 23 DO YOU REMEMBER THAT?

02:06PM 24 A. I DO.

02:06PM 25 Q. OKAY. AND IN ADDITION, YOU WERE PROVIDED WITH A LETTER

02:06PM 1 FROM THE LABORATORY RELATING TO I THINK THE TESTING TIME
02:06PM 2 PERIODS THAT THE LAB WAS USING ITS PROPRIETARY DEVICE, THE
02:06PM 3 EDISON.
02:06PM 4 DO YOU REMEMBER THAT?
02:06PM 5 A. I DO.
02:06PM 6 Q. AND I THINK THIS IS ALREADY IN EVIDENCE, AND IF I COULD
02:07PM 7 PUT IT UP ON THE SCREEN. IT'S EXHIBIT 4533.
02:07PM 8 AND YOU'LL SEE UP ON THE SCREEN, MS. BENNETT, 4533 IS
02:07PM 9 DATED SEPTEMBER 23RD, 2015.
02:07PM 10 DO YOU SEE THAT?
02:07PM 11 A. I DO.
02:07PM 12 Q. AND THAT WAS THE TIME PERIOD WHEN YOU WERE ACTUALLY ON
02:07PM 13 SITE; CORRECT?
02:07PM 14 A. YES.
02:07PM 15 Q. AND YOU INDICATED THAT, BECAUSE OF THE COMPLAINT, YOU
02:07PM 16 WANTED TO FIGURE OUT, OR AT LEAST GET INFORMATION RELATING TO
02:07PM 17 THE TIME PERIODS OF USE OF THE EDISON DEVICES AT THERANOS;
02:07PM 18 CORRECT?
02:07PM 19 A. YES.
02:07PM 20 Q. OKAY. AND THIS WAS THE LAB'S RESPONSE TO YOU; CORRECT?
02:07PM 21 A. THIS WAS MR. BALWANI'S RESPONSE TO ME.
02:07PM 22 Q. OKAY. SO YOU GOT IT FROM MR. BALWANI?
02:07PM 23 A. YES.
02:07PM 24 Q. OKAY. AND IN THAT LETTER MR. BALWANI DISCLOSED TO YOU THE
02:07PM 25 TIME PERIODS WHEN THE EDISON WAS USED, THE START DATES AND THE

02:07PM 1 END DATES; CORRECT?

02:07PM 2 A. YES.

02:07PM 3 Q. OKAY. NOW, IF WE FOCUS UP ON THE FIRST PARAGRAPH OF THE

02:07PM 4 LETTER THAT YOU INDICATED CAME FROM MR. BALWANI, YOU'LL NOTICE

02:08PM 5 THAT MR. BALWANI WROTE AROUND THE MIDDLE OF THE PARAGRAPH

02:08PM 6 STARTING, "THERANOS RECENTLY RECEIVED FDA CLEARANCE FOR ITS

02:08PM 7 THERANOS SYSTEM -- INCLUDING THE DEVICE, THE THERANOS SAMPLE

02:08PM 8 COLLECTION DEVICE (INCLUDING THE NANOTAINERS) AND OTHER

02:08PM 9 COMPONENTS OF THE SYSTEM."

02:08PM 10 DO YOU SEE THAT?

02:08PM 11 A. I DO.

02:08PM 12 Q. AND THEN MR. BALWANI REPORTED TO YOU THAT "THE LAB PLANS

02:08PM 13 TO BRING THESE UNITS LIVE AGAIN IN THE LAB AS 510K-CLEARED

02:08PM 14 ANALYZERS RATHER THAN LDT'S ONCE ADDITIONAL CLEARANCES ARE

02:08PM 15 OBTAINED."

02:08PM 16 DO YOU SEE THAT?

02:08PM 17 A. I DO.

02:08PM 18 Q. OKAY. SO THIS CAME FROM MR. BALWANI; CORRECT?

02:08PM 19 A. IT DID.

02:08PM 20 Q. OKAY. AND THEN FURTHER DOWN, THE NEXT PARAGRAPH,

02:08PM 21 MR. BALWANI EXPLAINED TO YOU THAT "THERANOS CHANGES THE

02:08PM 22 PLATFORMS ON WHICH IT RUNS TESTS FROM TIME TO TIME."

02:08PM 23 DO YOU SEE THAT?

02:08PM 24 A. I DO.

02:08PM 25 Q. AND IN YOUR SURVEY, YOU SAW EVIDENCE OF THAT, DIDN'T YOU?

02:08PM 1 YOU SAW FOR SOME ASSAYS AND TESTS, THERANOS WAS USING MULTIPLE
02:09PM 2 DEVICES; CORRECT?
02:09PM 3 A. THAT IS TRUE, YES.
02:09PM 4 Q. AND SOMETIMES THE TIME PERIODS CHANGED PERIODICALLY;
02:09PM 5 CORRECT?
02:09PM 6 A. THE --
02:09PM 7 Q. WHAT I MEAN -- I'LL CLARIFY.
02:09PM 8 THE EVIDENCE THAT YOU SAW DIDN'T SHOW THERANOS USING TWO
02:09PM 9 DEVICES CONCURRENTLY FOR THE ENTIRETY OF THE TIME IT WAS
02:09PM 10 OPERATING?
02:09PM 11 FAIR ENOUGH?
02:09PM 12 A. THERANOS WAS USING TWO DIFFERENT METHODS FOR THE SAME TYPE
02:09PM 13 OF TESTING.
02:09PM 14 Q. AT VARIOUS TIMES?
02:09PM 15 A. AT VARIOUS TIMES AND AT THE SAME TIME.
02:09PM 16 Q. FAIR ENOUGH. THANK YOU.
02:09PM 17 AND MR. BALWANI CONTINUES, "THE DECISION TO MOVE TESTING
02:09PM 18 OFF OF TSPU'S AND ON TO OTHER PLATFORMS IN THIS CASE WAS A
02:09PM 19 BUSINESS DECISION TO TRANSITION TO THE MANUFACTURING QUALITY
02:09PM 20 SYSTEMS TO QSR COMPLIANCE UNDER FDA GUIDELINES."
02:10PM 21 DO YOU SEE THAT?
02:10PM 22 A. I DO.
02:10PM 23 Q. SO CLIA HAS ITS OWN REGULATORY REQUIREMENTS FOR QUALITY
02:10PM 24 CONTROL AND QUALITY ASSURANCE.
02:10PM 25 YOU TESTIFIED ABOUT THAT QUITE A BIT YESTERDAY; CORRECT?

02:10PM 1 A. YES.

02:10PM 2 Q. AND CLIA'S REQUIREMENTS FOR QUALITY ASSURANCE AND QUALITY

02:10PM 3 CONTROL ARE DIFFERENT THAN FDA'S QUALITY KIND OF MANUFACTURING

02:10PM 4 REQUIREMENTS; CORRECT?

02:10PM 5 A. FDA HAS SEPARATE QUALITY SYSTEMS REQUIREMENTS FROM CLIA.

02:10PM 6 THEY'RE COMPLETELY DIFFERENT SETS OF REGULATIONS.

02:10PM 7 Q. THANK YOU.

02:10PM 8 AND THEN MR. BALWANI CONTINUED IN THE LETTER, "AND DOES

02:10PM 9 NOT REFLECT ON THE RELIABILITY OR ACCURACY OF ANY PLATFORM."

02:10PM 10 DO YOU SEE THAT?

02:10PM 11 A. I DO.

02:10PM 12 Q. AND THAT'S WHAT HE REPRESENTED TO YOU.

02:10PM 13 AND THEN FURTHER DOWN IN THE LETTER THERE'S THE CHART WITH

02:10PM 14 START AND END DATES FOR THE VARIOUS TESTS RUN ON THE EDISON.

02:10PM 15 DO YOU SEE THAT?

02:10PM 16 A. I DO.

02:10PM 17 Q. AND MOST OF THESE STOPPED USE WELL BEFORE YOU ARRIVED;

02:11PM 18 CORRECT?

02:11PM 19 A. YES.

02:11PM 20 Q. AND EVEN WELL BEFORE THE SURVEY WAS SCHEDULED IN THE

02:11PM 21 SUMMER OF 2015; CORRECT?

02:11PM 22 A. YES.

02:11PM 23 Q. YOU CAN TAKE THAT DOWN.

02:11PM 24 NOW, IN THE COURSE OF THE SURVEY IN SEPTEMBER, I'LL JUST

02:11PM 25 FOCUS ON THAT TIME PERIOD, YOU DESCRIBED THE INITIAL MEETING,

02:11PM 1 THE CONFERENCE; IS THAT CORRECT?

02:11PM 2 A. YES.

02:11PM 3 Q. AND DURING THAT CONFERENCE MR. BALWANI WAS PRESENT,

02:11PM 4 DR. YOUNG, AND OTHER STAFF MANAGERS AND STAFF, AS YOU'VE TOLD

02:11PM 5 US YESTERDAY; CORRECT?

02:11PM 6 A. YES.

02:11PM 7 Q. AND THEN THERE WAS THE TOURS?

02:11PM 8 A. YES.

02:11PM 9 Q. AND ON THE TOURS, AM I RIGHT THAT MR. BALWANI ACCOMPANIED

02:11PM 10 MR. YAMAMOTO?

02:11PM 11 A. I BELIEVE, IF I REMEMBER CORRECTLY, WE STARTED OUT

02:12PM 12 TOGETHER, AND THEN MR. BALWANI WAS WITH MR. YAMAMOTO.

02:12PM 13 Q. OKAY. SO IS IT FAIR TO SAY THAT IN THE SEPTEMBER TIME

02:12PM 14 PERIOD OF THE SURVEY, MR. YAMAMOTO SPENT MORE TIME WITH

02:12PM 15 MR. BALWANI THAN YOURSELF?

02:12PM 16 A. THAT'S FAIR TO SAY.

02:12PM 17 Q. NOW, DURING THE TIME PERIOD OF THE LABORATORY SURVEY, YOU

02:12PM 18 HAD SOME OPPORTUNITY TO INTERVIEW SOME OR -- I WON'T CALL THEM

02:12PM 19 FORMAL, BUT SOME FORMAL INTERVIEWS OR SOME DISCUSSIONS OR

02:12PM 20 QUESTIONS TO LAB PERSONNEL; CORRECT?

02:12PM 21 A. YES.

02:12PM 22 Q. AND YOU DESCRIBED THE PRESENCE OF SOME LAWYERS FOR SOME OF

02:12PM 23 THOSE AND THERE WAS SOME CONCERN, I GUESS, ON YOUR PART ABOUT

02:12PM 24 THAT?

02:12PM 25 A. YES, I WAS CONCERNED.

02:12PM 1 Q. OKAY. IN THE COURSE OF YOUR SURVEY, THOUGH, YOU NEVER
02:12PM 2 INTERVIEWED MR. BALWANI; CORRECT?
02:12PM 3 A. I DID NOT, NOT A FORMAL INTERVIEW.
02:12PM 4 Q. AND YOU NEVER INTERVIEWED MR. BALWANI ABOUT LABORATORY
02:12PM 5 NONCOMPLIANCE ISSUES; CORRECT?
02:13PM 6 A. THERE WERE DISCUSSIONS, BUT I DID NOT DIRECTLY INTERVIEW
02:13PM 7 HIM ABOUT THAT.
02:13PM 8 Q. NOW, YESTERDAY IN YOUR TESTIMONY, PARTICULARLY ON DIRECT,
02:13PM 9 YOU WERE ASKED QUESTIONS ABOUT THE COAGULATION TESTING AT
02:13PM 10 THERANOS, THE PT INR TESTING.
02:13PM 11 DO YOU REMEMBER THAT?
02:13PM 12 A. I DO.
02:13PM 13 Q. AND THE PT INR TESTING, ALONG WITH RELATED HEMATOLOGY, WAS
02:13PM 14 THE SUBJECT OF ONE OF THOSE CONDITION LEVEL DEFICIENCIES;
02:13PM 15 CORRECT?
02:13PM 16 A. YES.
02:13PM 17 Q. OKAY. AND CONDITION LEVEL DEFICIENCY, THAT'S ONE TYPE OF
02:13PM 18 DEFICIENCY, MORE SERIOUS THAN THE STANDARD LEVEL; CORRECT?
02:13PM 19 A. THAT'S CORRECT.
02:13PM 20 Q. OKAY. AND YOU IDENTIFIED SOME OF THE ISSUES WITH THE
02:13PM 21 PT INR TESTING IN THOSE FIRST TWO DAYS IN SEPTEMBER OF 2015;
02:13PM 22 CORRECT?
02:13PM 23 A. I DID.
02:13PM 24 Q. OKAY. AND IT'S THOSE ISSUES THAT YOU NOTIFIED THE
02:14PM 25 LABORATORY ABOUT; CORRECT?

02:14PM 1 A. THE LABORATORY AND THE STAFF THAT WAS IN THE DISCUSSION AT
02:14PM 2 THE END OF THE DAY, YES.

02:14PM 3 Q. OKAY. AND IT WOULD BE FAIR TO SAY THAT YOUR ANALYSIS AND
02:14PM 4 CONCLUSIONS REGARDING THE LAB'S TESTING ON PT INR DIDN'T END
02:14PM 5 THERE, YOU CONTINUED EVALUATING THAT TESTING WITH RECORDS
02:14PM 6 REVIEW, ET CETERA; CORRECT?

02:14PM 7 A. I CONTINUED REVIEWING IT, YES.

02:14PM 8 Q. NOW, IN RESPONSE TO SOME QUESTIONS FROM MR. LEACH
02:14PM 9 YESTERDAY, YOU WERE ASKED, DID YOU ALERT MR. BALWANI TO THE
02:14PM 10 PROBLEMS WITH PT INR IN THE SEPTEMBER PORTION OF THE EXAM.

02:14PM 11 DO YOU REMEMBER THAT?

02:14PM 12 A. I DO.

02:14PM 13 Q. AND YOU ANSWERED YES?

02:14PM 14 A. THAT IS CORRECT.

02:14PM 15 Q. OKAY. AND THEN MR. LEACH ASKED YOU, WELL, WHAT HAPPENED
02:14PM 16 WHEN YOU CAME BACK IN NOVEMBER?

02:14PM 17 DO YOU REMEMBER THAT?

02:14PM 18 A. I DO.

02:14PM 19 Q. AND YOU STARTED OUT ANSWERING NOTHING.

02:14PM 20 DO YOU REMEMBER THAT?

02:14PM 21 A. I DO.

02:14PM 22 Q. BUT YOU STOPPED YOURSELF?

02:14PM 23 A. I DID.

02:15PM 24 Q. AND THEN YOU FOLLOWED UP AND SAID, WELL, THE LAB DID
02:15PM 25 NOTIFY THE PATIENTS OF THE ISSUE WITH THE PT INR; CORRECT?

02:15PM 1 A. YES.

02:15PM 2 Q. OKAY. BUT THERE WAS AN ISSUE WITH, IN YOUR MIND, THE

02:15PM 3 TIMING OF THAT NOTICE, THAT THEY TOOK SEVEN WEEKS TO ACTUALLY

02:15PM 4 DO THAT NOTICE TO THE PATIENTS; CORRECT?

02:15PM 5 A. YES.

02:15PM 6 Q. AND IN YOUR MIND THAT WAS A CONCERN?

02:15PM 7 A. THAT WAS A CONCERN, YES.

02:15PM 8 Q. OKAY. BUT THEY DID NOTIFY THE PATIENTS AS FAR AS YOU WERE

02:15PM 9 MADE AWARE WHEN YOU CAME BACK IN NOVEMBER; CORRECT?

02:15PM 10 A. THEY PROVIDED DOCUMENTATION THAT THEY HAD PROVIDED SOME,

02:15PM 11 THAT THEY HAD NOTIFIED SOME, BUT NOT ALL, PATIENTS.

02:15PM 12 Q. OKAY. AND THE TOTALITY OF THE PATIENTS INVOLVED, THERE

02:15PM 13 WAS ABOUT 81 PATIENTS; CORRECT?

02:15PM 14 A. YES.

02:15PM 15 Q. NOW, DO YOU RECALL LEARNING, PRIOR TO YOUR TESTIMONY

02:15PM 16 YESTERDAY -- PRIOR TO YOUR TESTIMONY, DO YOU RECALL LEARNING

02:15PM 17 THAT UPON YOUR NOTICE OF THESE ISSUES WITH PT INR, THERANOS

02:16PM 18 ACTUALLY STOPPED, PAUSED FURTHER TESTING OF PT INR?

02:16PM 19 DO YOU REMEMBER LEARNING THAT PRIOR TO YOUR TESTIMONY

02:16PM 20 YESTERDAY?

02:16PM 21 A. I DON'T RECALL.

02:16PM 22 Q. OKAY. IN THIS LABORATORY SURVEY PROCESS WHERE -- WITH

02:16PM 23 THERANOS WHERE YOU ISSUED YOUR SURVEY REPORT, THERE WERE SOME

02:16PM 24 EXCHANGES BACK AND FORTH WITH THE LABORATORY; CORRECT?

02:16PM 25 A. YES.

02:16PM 1 Q. WHERE THE LABORATORY MADE EFFORTS AT LEAST TO RESPOND TO
02:16PM 2 YOUR IDENTIFIED DEFICIENCIES; CORRECT?
02:16PM 3 A. YES.
02:16PM 4 Q. AND YOU SAW THOSE AND REVIEWED THOSE; CORRECT?
02:16PM 5 A. YES.
02:16PM 6 Q. BECAUSE THAT WAS YOUR JOB?
02:16PM 7 A. THAT'S MY JOB.
02:16PM 8 Q. OKAY. AND ULTIMATELY YOU WEREN'T SATISFIED WITH
02:16PM 9 THERANOS'S RESPONSES; CORRECT?
02:16PM 10 A. THAT'S CORRECT.
02:16PM 11 Q. IF WE COULD TAKE A LOOK AT, I THINK YOU HAVE THE DEFENSE
02:16PM 12 BINDERS THERE, EXHIBIT 5257.
02:17PM 13 A. I DO NOT HAVE A 5257.
02:17PM 14 MR. CAZARES: MAY I APPROACH, YOUR HONOR?
02:17PM 15 THE COURT: YES.
02:17PM 16 MR. CAZARES: YOU DON'T HAVE IT BECAUSE I HAVE IT.
02:17PM 17 LET ME GET IT TO YOU.
02:17PM 18 WHOOPS, THAT IS THE WRONG ONE. I HAVE NOTES ON THAT.
02:17PM 19 (HANDING.)
02:18PM 20 Q. AND I'M NOT GOING TO ASK YOU QUESTIONS ABOUT THE ENTIRE
02:18PM 21 DOCUMENT, BUT IF YOU COULD TAKE A LOOK AT PAGE -- NOW, YOU'RE
02:18PM 22 FAMILIAR WITH THE DOCUMENT; CORRECT?
02:18PM 23 A. I AM.
02:18PM 24 Q. OKAY. THIS IS THERANOS'S RESPONSE TO THE SURVEY REPORT;
02:18PM 25 CORRECT?

02:18PM 1 A. IT'S A RESPONSE, YES.

02:18PM 2 Q. THERE WERE MULTIPLE?

02:18PM 3 A. YES.

02:18PM 4 Q. OKAY. IF YOU WOULD TURN TO PAGE 19, THE EXHIBIT PAGE IN

02:18PM 5 THE MIDDLE OF THE BOTTOM OF THE DOCUMENT.

02:18PM 6 DO YOU SEE THAT?

02:18PM 7 A. I DO.

02:18PM 8 Q. OKAY. AND THEN ON THE RIGHT-HAND COLUMN, THIS IS DEALING

02:18PM 9 WITH D-TAG 5413.

02:18PM 10 DO YOU SEE THAT?

02:18PM 11 A. I DO.

02:18PM 12 Q. AND JUST READ THAT FIRST PARAGRAPH TO YOURSELF.

02:19PM 13 DOES THAT REFRESH YOUR RECOLLECTION THAT PRIOR TO YOUR

02:19PM 14 TESTIMONY YESTERDAY YOU LEARNED THAT THERANOS PAUSED ITS

02:19PM 15 TESTING ON PT INR?

02:19PM 16 A. YES.

02:19PM 17 Q. OKAY. YOU CAN SET THAT ASIDE.

02:19PM 18 NOW, THE PT INR TESTING, THE ONE YOU DESCRIBED, WAS ONE OF

02:19PM 19 THE CONDITION LEVEL DEFICIENCIES; CORRECT?

02:19PM 20 A. IT WAS.

02:19PM 21 Q. AND THE FACT THAT THERANOS STOPPED THE TESTING FIRST WAS A

02:19PM 22 GOOD FIRST STEP; CORRECT?

02:19PM 23 A. IT'S A GOOD STEP.

02:19PM 24 Q. AND YOU WOULD EXPECT MORE, BUT THAT'S A GOOD FIRST STEP?

02:19PM 25 A. YES.

02:19PM 1 Q. AND WHAT YOU WOULD EXPECT THE LAB TO DO IS INVESTIGATE
02:19PM 2 WHAT HAPPENED?
02:19PM 3 A. THAT'S CORRECT.
02:19PM 4 Q. BECAUSE IN ORDER TO DETERMINE, LIKE, WHY THEY HAD THESE
02:20PM 5 PROBLEMS; CORRECT?
02:20PM 6 A. YES.
02:20PM 7 Q. AND THE NEXT STEP YOU WOULD ALSO EXPECT WAS TO NOTIFY THE
02:20PM 8 PATIENTS; CORRECT?
02:20PM 9 A. THAT'S ONE OF THE REQUIREMENTS IS TO NOTIFY THE PATIENTS,
02:20PM 10 YES.
02:20PM 11 Q. AND ULTIMATELY THE LAB DID NOTIFY THE PATIENTS; CORRECT?
02:20PM 12 A. WE WERE NEVER ABLE TO DETERMINE IF THEY NOTIFIED ALL OF
02:20PM 13 THE PATIENTS.
02:20PM 14 Q. OKAY. YOU RECEIVED EVIDENCE OF AT LEAST SOME OF THE
02:20PM 15 NOTIFICATIONS; CORRECT?
02:20PM 16 A. YES.
02:20PM 17 Q. SORRY. JUST GETTING THE TRANSCRIPT RIGHT.
02:20PM 18 NOW, ONE OF THE OTHER ISSUES YOU TESTIFIED YESTERDAY ABOUT
02:20PM 19 WAS THE ULTIMATE FINDING, YOU KNOW, THERE WERE SOME STANDARD
02:20PM 20 LEVEL DEFICIENCIES THAT WERE IDENTIFIED, THERE WERE SOME
02:20PM 21 CONDITION LEVEL NONCOMPLIANCE THAT YOU IDENTIFIED, AND THEN FOR
02:20PM 22 THE HEMATOLOGY AREA, I'LL CALL IT, THERE WAS ALSO AN IMMEDIATE
02:21PM 23 JEOPARDY FINDING; CORRECT?
02:21PM 24 A. CORRECT.
02:21PM 25 Q. OKAY. AND AGAIN, THAT DETERMINATION WAS NOT MADE UNTIL

02:21PM 1 MONTHS AFTER THE SURVEY BEGAN; CORRECT?

02:21PM 2 A. THAT DETERMINATION WAS MADE WHEN THE SURVEY WAS COMPLETED,

02:21PM 3 BUT THE LABORATORY HAD BEEN NOTIFIED THAT WE WERE CONSIDERING

02:21PM 4 IT IN SEPTEMBER.

02:21PM 5 Q. ARE YOU SURE ABOUT THAT?

02:21PM 6 A. THAT'S MY RECOLLECTION.

02:21PM 7 Q. OKAY. LET MET GET YOU -- YOUR HONOR, I'M NOT SURE. DID

02:21PM 8 THE COURT GET A TRANSCRIPT BINDER? I'M NOT SURE WE HANDED

02:21PM 9 THOSE OUT. NO? LET ME GET IT.

02:22PM 10 (HANDING.)

02:22PM 11 AND WITHIN THE BINDER, THE TESTIMONY BINDER,

02:22PM 12 EXHIBIT 28009, YOUR HONOR, AT PAGE 25, LINES 7 TO 24.

02:23PM 13 THE COURT: WOULD YOU LIKE THIS WITNESS TO READ THEM

02:23PM 14 TO HERSELF?

02:23PM 15 MR. CAZARES: NO. I HAVE A VIDEO, YOUR HONOR.

02:23PM 16 THE COURT: MR. LEACH.

02:23PM 17 MR. LEACH: OBJECTION. THIS IS NOT PROPER 611, AND

02:23PM 18 IT'S HEARSAY.

02:23PM 19 MR. CAZARES: PRIOR SWORN TESTIMONY.

02:23PM 20 THE COURT: I'M NOT SURE WHAT THIS RELATES TO.

02:23PM 21 WHAT QUESTION DOES THIS RELATE TO?

02:24PM 22 MR. CAZARES: RELATING TO THE TIMING OF

02:24PM 23 DETERMINATION OF IMMEDIATE JEOPARDY AND NOTICE TO THE LAB.

02:24PM 24 MR. LEACH: THAT IS NOT HIS QUESTION, YOUR HONOR.

02:24PM 25 THE QUESTION WAS WHETHER SHE WAS CONSIDERING IT IN

02:24PM 1 SEPTEMBER --

02:24PM 2 MR. CAZARES: I DIDN'T SAY CONSIDER.

02:24PM 3 THE COURT: ONE AT A TIME, PLEASE.

02:24PM 4 THIS IS RELATED TO YOUR QUESTION, "THE DETERMINATION WAS

02:24PM 5 NOT MADE UNTIL MONTHS AFTER THE SURVEY BEGAN"?

02:24PM 6 MR. CAZARES: AND THE WITNESS JUST TESTIFIED THAT

02:24PM 7 THE LAB WAS NOTIFIED IN SEPTEMBER, AND IF YOU LOOK AT LINE 17

02:24PM 8 TO 21 IN PARTICULAR --

02:24PM 9 THE COURT: I'M SORRY, 17 TO?

02:24PM 10 MR. CAZARES: 17 TO 21, AND YOU CAN EVEN CONTINUE

02:24PM 11 UNTIL 24.

02:25PM 12 THE COURT: THIS LOOKS A LITTLE DIFFERENT.

02:25PM 13 MR. CAZARES: I CAN RESET IT UP, YOUR HONOR.

02:25PM 14 THE COURT: LINE 18 REFERENCES COMPLIANCE ABOUT A

02:25PM 15 SPECIFIC ISSUE.

02:25PM 16 MR. CAZARES: THAT ISSUE IS THE SAME ISSUE. IT'S A

02:25PM 17 DIFFERENT WORD. COAGULATION, PT INR, IT'S THE SAME TEST.

02:25PM 18 THE COURT: WELL, I THINK IT -- YOU NEED TO LAY A

02:25PM 19 FOUNDATION.

02:25PM 20 MR. CAZARES: OKAY.

02:25PM 21 Q. SO, MS. BENNETT, I THINK YOU ALREADY TESTIFIED THAT THE

02:25PM 22 PT INR TEST IS A COAGULATION TEST; CORRECT?

02:25PM 23 A. YES, IT'S A TYPE OF COAGULATION TEST.

02:25PM 24 Q. AND THE PT INR COAGULATION TEST IS THE TEST AT ISSUE IN

02:26PM 25 RELATION TO THE CONDITION LEVEL NONCOMPLIANCE THAT YOU FOUND;

02:26PM 1 CORRECT?

02:26PM 2 A. THE PT INR WAS PART OF THE CONDITION LEVEL NONCOMPLIANCE,

02:26PM 3 YES.

02:26PM 4 Q. AND ALSO PART OF THE ULTIMATE IMMEDIATE JEOPARDY ISSUE AS

02:26PM 5 WELL; CORRECT?

02:26PM 6 A. YES.

02:26PM 7 Q. OKAY. AND YOU JUST TESTIFIED, I BELIEVE RIGHT NOW, THAT

02:26PM 8 IN SEPTEMBER OF 2015, YOU NOTIFIED THE LAB THAT YOU WERE

02:26PM 9 CONSIDERING IMMEDIATE JEOPARDY REGARDING PT INR; CORRECT?

02:26PM 10 A. WE NOTIFIED THE LAB THAT WE WERE CONSIDERING IT, BUT THAT

02:26PM 11 A FINAL DETERMINATION HAD NOT BEEN MADE.

02:26PM 12 Q. AND SO WAS THAT MADE CLEAR TO MR. BALWANI, THAT YOU HAD

02:26PM 13 NOT MADE A DETERMINATION OF IMMEDIATE JEOPARDY IN SEPTEMBER OF

02:26PM 14 2015?

02:26PM 15 A. IT WAS MADE CLEAR.

02:26PM 16 Q. OKAY. AND THAT DETERMINATION REGARDING IMMEDIATE JEOPARDY

02:27PM 17 WAS NOT CONCLUDED AND DETERMINED FINALLY IN NOVEMBER OF 2015

02:27PM 18 EITHER; CORRECT?

02:27PM 19 A. WE HAD NOT MADE A DECISION, A FINAL DECISION WHETHER WE

02:27PM 20 WERE GOING TO CALL I.J. BY THE END OF SEPTEMBER, IMMEDIATE

02:27PM 21 JEOPARDY.

02:27PM 22 Q. UNTIL THE END --

02:27PM 23 THE COURT: PULL THAT MICROPHONE CLOSER TO YOU.

02:27PM 24 BY MR. CAZARES:

02:27PM 25 Q. JUST SO THE TRANSCRIPT IS CLEAR, THAT CONCLUSION REGARDING

02:27PM 1 IMMEDIATE JEOPARDY WAS NOT MADE UNTIL THE CONCLUSION OF THE
02:27PM 2 SURVEY; CORRECT?

02:27PM 3 A. THAT IS CORRECT.

02:27PM 4 Q. AND THE SURVEY DIDN'T CONCLUDE ULTIMATELY UNTIL THE SURVEY
02:27PM 5 REPORT WAS ISSUED; CORRECT?

02:27PM 6 A. THE SURVEY CONCLUDES ON THE EXIT DAY OF THE CONFERENCE,
02:27PM 7 WHICH I BELIEVE WAS NOVEMBER 20TH, AND THEN WE NOTIFIED THE
02:27PM 8 LABORATORY IN WRITING ABOUT IMMEDIATE JEOPARDY.

02:28PM 9 Q. OKAY. IS IT CORRECT THAT THERE IS NO PARTICULAR AMOUNT OF
02:28PM 10 EVIDENCE REQUIRED UNDER CLIA IN ORDER TO MAKE A CONDITION LEVEL
02:28PM 11 FINDING?

02:28PM 12 A. THAT IS CORRECT, ALTHOUGH WE DO HAVE SOME --

02:28PM 13 Q. THERE'S NO QUESTION PENDING HERE, MS. BENNETT. MR. LEACH
02:28PM 14 WILL HAVE A CHANCE TO ASK FOLLOWUPS IF HE DECIDES TO.

02:28PM 15 I DON'T MEAN TO BE RUDE. THAT'S NOT MY INTENT.

02:28PM 16 A. SURE.

02:28PM 17 Q. MY NEXT QUESTION IS, I GUESS A FINDING OF NONCOMPLIANCE IN
02:28PM 18 THE LABORATORY BY YOU DID NOT REQUIRE EVIDENCE THAT THE LAB
02:29PM 19 DIRECTOR WAS AWARE OF THE DEFICIENT PRACTICES; CORRECT?

02:29PM 20 A. I'M SORRY. CAN YOU RE-ASK THE QUESTION?

02:29PM 21 Q. YOUR FINDINGS OF NONCOMPLIANCE WITH CLIA AT THERANOS DID
02:29PM 22 NOT REQUIRE EVIDENCE IDENTIFIED BY YOURSELF THAT THE LAB
02:29PM 23 DIRECTOR EVEN KNEW ABOUT THE NONCOMPLIANT PRACTICES?

02:29PM 24 A. THAT'S TRUE.

02:29PM 25 Q. SAME GOES FOR THE STAFF? THE LAB STAFF?

02:29PM 1 A. RIGHT. THAT'S TRUE.

02:29PM 2 Q. SAME FOR THE OWNERS OF THE LAB?

02:29PM 3 A. THAT'S TRUE.

02:29PM 4 Q. NOW, YOU DESCRIBED SOME ISSUES AGAIN, AGAIN, WE'RE TALKING

02:29PM 5 ABOUT THE PT INR AND THE COAGULATION TESTING, ISSUES RELATING

02:29PM 6 TO THE STABILITY TIME PERIOD FOR THE REAGENT, THE INNOVANT.

02:30PM 7 DO YOU REMEMBER THAT?

02:30PM 8 A. YES.

02:30PM 9 Q. AND THAT WAS ONE OF THE MAJOR ISSUES THAT YOU IDENTIFIED;

02:30PM 10 CORRECT?

02:30PM 11 A. YES.

02:30PM 12 Q. BECAUSE YOU, AND I'LL GET INTO MORE DETAIL LATER, BUT AT

02:30PM 13 LEAST TO START, YOU LOOKED INTO THE ISSUE AND SAW BOTTLES, I

02:30PM 14 GUESS, OF THE INNOVANT WITH A STABILITY TIME PERIOD OR

02:30PM 15 EXPIRATION DATE OF FIVE DAYS, BUT YOU WENT AND LOOKED AT THE

02:30PM 16 PACKAGING AND THERE WAS LIKE A LITTLE PINK INSERT IN THE

02:30PM 17 PACKAGE, AND IT HAD CHANGED. IT WAS ONLY STABLE FOR TWO DAYS;

02:30PM 18 IS THAT RIGHT?

02:30PM 19 A. THAT'S CORRECT.

02:30PM 20 Q. OKAY. AND THE LAB STAFF WAS SURPRISED AT YOUR FINDING;

02:30PM 21 CORRECT?

02:30PM 22 MR. LEACH: OBJECTION. SPECULATION.

02:30PM 23 THE COURT: YOU CAN ANSWER THE QUESTION IF YOU HAVE

02:30PM 24 PERSONAL KNOWLEDGE OF THEIR DEMEANOR.

02:30PM 25 THE WITNESS: OKAY. THEY WERE UNAWARE OF THE

02:30PM 1 CHANGE.

02:31PM 2 BY MR. CAZARES:

02:31PM 3 Q. NOW, IN THE COURSE OF THE SURVEY, YOU IDENTIFIED SOME

02:31PM 4 ISSUES RELATING TO, SOME TRAINING ISSUES I'LL CALL IT, RELATING

02:31PM 5 TO SOME OF THE STAFF, AND EVEN SOME OF THE MANAGEMENT; CORRECT?

02:31PM 6 A. I BELIEVE I LOOKED AT STAFF.

02:31PM 7 Q. AND PART OF THIS PROCESS IS LOOKING FOR DOCUMENTATION IN

02:31PM 8 THE EMPLOYEE'S FILES TO DEMONSTRATE TO YOU THAT THE EMPLOYEE

02:31PM 9 HAS THE REQUIRED MINIMUM KIND OF EDUCATIONAL AND TRAINING

02:31PM 10 EXPERIENCE; CORRECT?

02:31PM 11 A. YES.

02:31PM 12 Q. AND IN THE COURSE OF THE SURVEY, YOU IDENTIFIED SOME LAB

02:31PM 13 STAFF IN WHICH THEIR FILES DIDN'T HAVE THE REQUIRED

02:31PM 14 DOCUMENTATION TO DEMONSTRATE EITHER THEIR EDUCATION OR TRAINING

02:31PM 15 REQUIREMENTS; CORRECT?

02:31PM 16 A. YES.

02:31PM 17 Q. AND YOU WOULD AGREE WITH ME THAT YOU IDENTIFIED NO

02:31PM 18 EVIDENCE THAT MR. BALWANI WAS AWARE OF THE FACT THAT THE LAB

02:32PM 19 HAD INSUFFICIENT DOCUMENTATION OF TRAINING OR EXPERIENCE FOR

02:32PM 20 SOME OF THE LABORATORY STAFF?

02:32PM 21 A. I CAN'T SPEAK TO WHAT MR. BALWANI UNDERSTOOD.

02:32PM 22 Q. THAT WASN'T EXACTLY MY QUESTION.

02:32PM 23 A. OKAY.

02:32PM 24 Q. MY QUESTION WAS, YOU IDENTIFIED NO EVIDENCE THAT

02:32PM 25 MR. BALWANI WAS AWARE OF THE FACT THAT THERE WAS INSUFFICIENT

02:32PM 1 DOCUMENTATION FOR EDUCATION AND TRAINING FOR SOME OF THE LAB
02:32PM 2 STAFF?
02:32PM 3 A. NOT THAT I RECALL.
02:32PM 4 Q. NOW, AGAIN, GETTING BACK TO THESE ISSUES OF THE CONDITION
02:32PM 5 LEVEL NONCOMPLIANCE, THERE WERE DIFFERENT ISSUES THAT SUPPORTED
02:32PM 6 THE CONDITION LEVEL NONCOMPLIANCE.
02:32PM 7 ONE WAS, LIKE WE SAID, THE HEMATOLOGY, AND PT INR.
02:33PM 8 AND JUST TO MAKE IT CLEAR, THE TESTING BY THERANOS FOR
02:33PM 9 PT INR, THAT WAS NOT PERFORMED ON THERANOS'S EDISON DEVICE;
02:33PM 10 CORRECT?
02:33PM 11 A. IT WAS NOT.
02:33PM 12 Q. NOW, IN THE COURSE OF A SURVEY, ACTUALLY THERANOS'S
02:33PM 13 SURVEY -- IN THE COURSE OF YOUR SURVEY OF THERANOS, IS IT
02:33PM 14 CORRECT THAT YOU, AS A CMS SURVEYOR, WERE UNABLE TO DETERMINE
02:33PM 15 WHETHER OR NOT ANY PATIENTS WERE ACTUALLY AFFECTED BY THE
02:33PM 16 NONCOMPLIANCE YOU FOUND?
02:33PM 17 A. WE -- I'M SORRY. CAN YOU ASK THE QUESTION AGAIN?
02:33PM 18 Q. AS A CMS SURVEYOR --
02:33PM 19 A. UH-HUH.
02:33PM 20 Q. -- IN RELATION TO YOUR SURVEY OF THERANOS, YOU WERE UNABLE
02:34PM 21 TO DETERMINE WHETHER ANY PATIENTS WERE ACTUALLY AFFECTED BY THE
02:34PM 22 NONCOMPLIANCE YOU IDENTIFIED IN THE SURVEY?
02:34PM 23 A. ARE YOU TALKING ABOUT PT INR?
02:34PM 24 Q. NO. I'M TALKING ABOUT OTHER TESTING.
02:34PM 25 A. OKAY. WE CAN IDENTIFY IF PATIENTS HAVE THE POTENTIAL TO

02:34PM 1 BE AFFECTED, AND SOMETIMES WE CAN DETERMINE THAT SPECIFIC
02:34PM 2 PATIENTS MAY HAVE BEEN AFFECTED.
02:34PM 3 Q. BUT, AGAIN, IT'S POTENTIAL OR MAY, CORRECT, WHAT YOU JUST
02:34PM 4 TESTIFIED TO?
02:34PM 5 A. YES. WE ALSO --
02:34PM 6 Q. WELL, I'M NOT ASKING ANOTHER QUESTION RIGHT NOW.
02:34PM 7 A. OKAY.
02:34PM 8 Q. BUT MY QUESTION TO YOU IS A LITTLE BIT DIFFERENT. AND MY
02:34PM 9 QUESTION IS, IN YOUR SURVEY OF THERANOS, YOU DID NOT IDENTIFY
02:34PM 10 PATIENTS WHO WERE ACTUALLY AFFECTED BY THE NONCOMPLIANCE YOU
02:34PM 11 IDENTIFIED; CORRECT?
02:34PM 12 A. I DID IN PT INR.
02:34PM 13 Q. AND WE'LL TALK ABOUT THAT. LET'S SET PT INR ASIDE --
02:35PM 14 A. OKAY.
02:35PM 15 Q. -- BECAUSE THAT'S A UNIQUE CATEGORY. WE'LL TALK ABOUT
02:35PM 16 THAT.
02:35PM 17 SETTING THAT ONE ASIDE, THAT WASN'T ON THE EDISON;
02:35PM 18 CORRECT?
02:35PM 19 A. CORRECT.
02:35PM 20 Q. AND ALL OF THE OTHER NONCOMPLIANCE THAT YOU IDENTIFIED,
02:35PM 21 YOU WERE NOT ABLE TO IDENTIFY OR CONFIRM WHETHER ANY PATIENT
02:35PM 22 WAS ACTUALLY AFFECTED BY THE NONCOMPLIANCE YOU IDENTIFIED IN
02:35PM 23 YOUR SURVEY REPORT?
02:35PM 24 A. WE CAN IDENTIFY PATIENTS BY THEIR UNIQUE SPECIMEN
02:35PM 25 IDENTIFIER, AND IF THERE WAS A NONCOMPLIANCE THAT OCCURRED,

02:35PM 1 THEN WE CAN IDENTIFY THAT THOSE PATIENTS MAY, COULD HAVE BEEN,
02:35PM 2 OR MAY HAVE BEEN AFFECTED, YES.
02:35PM 3 Q. OKAY. AND JUST TO BE CLEAR SO WE KNOW WHAT WE'RE TALKING
02:35PM 4 ABOUT --
02:35PM 5 A. RIGHT.
02:35PM 6 Q. -- THERE MAY BE A TIME PERIOD OF NONCOMPLIANCE THAT IS
02:35PM 7 CALLED QC FAILURES, FOR EXAMPLE, YOU COULD IDENTIFY PATIENTS
02:35PM 8 WHO RECEIVED RESULTS MAYBE DURING THAT TIME OF NONCOMPLIANCE.
02:35PM 9 IS THAT WHAT YOU JUST DESCRIBED TO ME?
02:36PM 10 A. YES.
02:36PM 11 Q. AND MY QUESTION IS GOING A LITTLE FURTHER THAN THAT.
02:36PM 12 AS A SURVEYOR OF CMS -- AS A CMS SURVEYOR OF THERANOS'S
02:36PM 13 LABORATORY, YOU DID NOT IDENTIFY PATIENTS WHO WERE ACTUALLY
02:36PM 14 AFFECTED BY POTENTIALLY INACCURATE RESULTS OR THE NONCOMPLIANCE
02:36PM 15 YOU IDENTIFIED, SETTING APART THE PT INR.
02:36PM 16 A. THAT WOULD BE FOR THE PATIENT'S PROVIDER TO DETERMINE IF A
02:36PM 17 PATIENT WAS SPECIFICALLY AFFECTED.
02:36PM 18 Q. BECAUSE TO THE EXTENT THAT THERE MAY HAVE BEEN SOME ISSUE
02:36PM 19 WITH A PATIENT RESULT, IT'S REALLY A MEDICAL DOCTOR WHO IS IN
02:36PM 20 THE BEST POSITION TO DETERMINE WHETHER OR NOT THAT RESULT,
02:36PM 21 VARIANCE, OR SOME OTHER ISSUE, MAY HAVE HAD SOME MEDICAL
02:36PM 22 SIGNIFICANCE; CORRECT?
02:36PM 23 A. CLIA DOES NOT GET INTO THE CLINICAL USE OF THE TEST
02:36PM 24 RESULTS. THAT'S NOT UNDER OUR PURVIEW.
02:36PM 25 Q. AND MEDICAL DOCTORS WOULD BE IN A BETTER POSITION TO

02:36PM 1 DETERMINE THAT; CORRECT?

02:36PM 2 A. IT WOULD BE THEIR CALL.

02:37PM 3 Q. LET'S GO TO THE ACTUAL PT INR. WE'LL TALK ABOUT THAT.

02:37PM 4 WITH RESPECT TO THE CONDITION LEVEL NONCOMPLIANCE AND

02:37PM 5 IMMEDIATE JEOPARDY RELATED TO THE PT INR TESTING, THE CLIA

02:37PM 6 RULES AND REGULATIONS DO NOT REQUIRE A FINDING BY YOU OF ACTUAL

02:37PM 7 PATIENT IMPACT OR AFFECT DUE TO THE NONCOMPLIANCE; CORRECT?

02:37PM 8 A. THAT'S CORRECT.

02:37PM 9 Q. THERE WAS A LITTLE BIT OF DISCUSSION -- ACTUALLY, VERY

02:37PM 10 LITTLE DISCUSSION -- ABOUT DR. DHAWAN, WHO WAS THE LAB DIRECTOR

02:37PM 11 WHO WAS IN PLACE DURING YOUR TIME PERIOD OF 2015.

02:38PM 12 DO YOU RECALL THAT?

02:38PM 13 A. I DO.

02:38PM 14 Q. SO, DR. DHAWAN, I THINK YOU RECALL HIM BEING PRESENT IN

02:38PM 15 SEPTEMBER, OR MAYBE THE FIRST DAY OF THE SEPTEMBER 2015 VISIT;

02:38PM 16 IS THAT RIGHT?

02:38PM 17 A. HE WAS PRESENT AT ONE POINT. I'M NOT SURE EXACTLY WHICH

02:38PM 18 DAY.

02:38PM 19 Q. OKAY. AND THE ABSENCE OF A LAB DIRECTOR DURING A SURVEY

02:38PM 20 BY YOURSELF OR CMS OF A LABORATORY, THAT ON ITS OWN IS NOT

02:38PM 21 UNUSUAL; CORRECT?

02:38PM 22 A. IT IS NOT UNUSUAL.

02:38PM 23 Q. TYPICALLY YOU'LL HAVE ACCESS TO LAB STAFF OR PEOPLE WHO

02:38PM 24 ARE DOING MORE HANDS-ON WORK; IS THAT FAIR?

02:38PM 25 A. WE'LL HAVE ACCESS TO THE STAFF AND THE LABORATORY

02:38PM 1 DIRECTOR, THEY JUST MAY NOT BE ACTUALLY PRESENT.

02:38PM 2 Q. FAIR ENOUGH.

02:38PM 3 NOW, WITH RESPECT TO DR. DHAWAN, HE WAS QUALIFIED UNDER

02:38PM 4 CLIA TO BE THE LAB DIRECTOR OF THERANOS'S HIGH COMPLEXITY LAB;

02:38PM 5 CORRECT?

02:38PM 6 A. HE WAS.

02:38PM 7 Q. NOW, WE TALKED A LITTLE BIT ABOUT THE KIND OF BACK AND

02:39PM 8 FORTH THAT TOOK PLACE BETWEEN CMS AND THERANOS IN THIS CASE,

02:39PM 9 BUT EVEN STEPPING BACK FROM THAT SPECIFIC TO TALK ABOUT JUST

02:39PM 10 LABORATORY'S RESPONSE TO DEFICIENCY FINDINGS OR NONCOMPLIANCE

02:39PM 11 BY CMS, OR MAYBE IT'S A STATE REGULATOR, THE LAB IS REQUIRED TO

02:39PM 12 TAKE SOME SORT OF CORRECTIVE ACTION AND DEMONSTRATE THAT THEY

02:39PM 13 FIXED THE NONCOMPLIANCE.

02:39PM 14 IS THAT FAIR?

02:39PM 15 A. THAT IS FAIR.

02:39PM 16 Q. AND I THINK WE TALKED ABOUT THIS A LITTLE BIT YESTERDAY,

02:39PM 17 YOU KNOW, ONE TYPE OF RESPONSE A LAB MAY HAVE IS TO PROVIDE

02:39PM 18 DOCUMENTATION TO CMS OF SOME SORT OF COMPARISON OF PATIENT

02:39PM 19 RESULTS WITH THE NONCOMPLIANCE TIME PERIOD, SAYING IT'S QUALITY

02:39PM 20 CONTROL, SO SOME SORT OF COMPARISON COULD BE DONE.

02:39PM 21 IS THAT FAIR?

02:39PM 22 A. IT WOULD DEPEND ON WHAT THE DEFICIENCY WAS. THE

02:40PM 23 DEFICIENCY THAT WAS CITED WOULD BE WHAT THEY WOULD SUBMIT.

02:40PM 24 Q. OKAY. AND IF THE DEFICIENCIES RELATED TO ISSUES WITH

02:40PM 25 QUALITY CONTROL OR FAILURES TO FOLLOW PROCEDURES WITH RESPECT

02:40PM 1 TO QUALITY CONTROL, ONE CORRECTIVE ACTION A LAB MAY TAKE IS TO
02:40PM 2 PROVIDE DOCUMENTATION SHOWING PATIENT RESULTS AND TRENDS IN
02:40PM 3 COMPARISON TO THAT PERIOD OF NONCOMPLIANCE; CORRECT?
02:40PM 4 A. PATIENT TRENDS COMPARED TO WHAT?
02:40PM 5 Q. PATIENT RESULTS AND TRENDS DURING THE TIME PERIOD OF
02:40PM 6 NONCOMPLIANCE?
02:40PM 7 A. THAT COULD BE PART OF WHAT THEY SUBMIT.
02:40PM 8 Q. ALONG WITH SOME EVALUATION OR ANALYSIS OF THOSE RECORDS;
02:40PM 9 CORRECT?
02:40PM 10 A. YES, YES.
02:40PM 11 Q. FOR EXAMPLE, IF A LAB -- IF YOU IDENTIFIED NONCOMPLIANCE
02:40PM 12 IN THE AREA OF PROFICIENCY TESTING, AGAIN, A LABORATORY MAY
02:40PM 13 PROVIDE OR SUBMIT EVIDENCE OF ANALYSIS OF PATIENT RESULTS
02:41PM 14 COMPARED WITH THE TIME PERIOD WHEN THERE WAS THIS NONCOMPLIANCE
02:41PM 15 WITH PROFICIENCY TESTING; CORRECT?
02:41PM 16 A. I GUESS I'M NOT UNDERSTANDING WHAT YOU MEAN BY PATIENT
02:41PM 17 COMPARISON. I'M NOT UNDERSTANDING WHAT YOU'RE COMPARING IT TO.
02:41PM 18 Q. TO THE TIME PERIOD OF NONCOMPLIANCE IN ORDER TO DETERMINE
02:41PM 19 WHETHER THE PATIENT RESULTS APPEAR TO HAVE ANY IMPACT FROM THE
02:41PM 20 NONCOMPLIANCE.
02:41PM 21 A. YES, THEY HAVE TO LOOK TO SEE IF PATIENTS TESTED DURING
02:41PM 22 THE NONCOMPLIANCE COULD HAVE BEEN AFFECTED BY THEIR DEFICIENT
02:41PM 23 PRACTICE, YES.
02:41PM 24 Q. AND TO DO THAT, YOU HAVE TO -- THE LAB, ANYWAY, WOULD HAVE
02:41PM 25 TO LOOK AT THE PATIENT RESULTS AND RECORDS; CORRECT?

02:41PM 1 A. YES, AS PART OF THEIR INVESTIGATION.

02:41PM 2 Q. AND THEY COULD ALSO, FOR EXAMPLE, EVEN IF THERE WAS AN

02:41PM 3 ISSUE WITH A PATIENT RESULT DURING A PERIOD OF NONCOMPLIANCE,

02:42PM 4 THE LAB COULD COMPARE THAT PATIENT'S RESULTS WITH THE QUALITY

02:42PM 5 CONTROL RESULTS THAT RAN ON THAT PARTICULAR DEVICE DURING THE

02:42PM 6 RELEVANT TIME PERIOD; CORRECT?

02:42PM 7 A. WE WOULD EXPECT THEM TO DO THAT.

02:42PM 8 Q. OKAY. AND THE LAB COULD ALSO POSSIBLY COMPARE THAT OWN

02:42PM 9 PATIENT'S HISTORY OF TEST RESULTS AGAINST THE RESULT THAT TOOK

02:42PM 10 PLACE DURING THE PERIOD OF NONCOMPLIANCE MIGHT BE ANOTHER

02:42PM 11 EFFORT TO DO ANALYSIS; CORRECT?

02:42PM 12 A. THEY CAN LOOK AT PATIENT HISTORICAL INFORMATION.

02:42PM 13 Q. OKAY. NOW, IN THE COURSE OF THE SURVEY, AGAIN, I THINK WE

02:42PM 14 DESCRIBED IT YESTERDAY, YOU WERE REQUESTING RECORDS,

02:42PM 15 MR. BALWANI WAS -- CORRECT?

02:42PM 16 A. I WAS, YES.

02:42PM 17 Q. OKAY. YOU DESCRIBED MR. BALWANI WAS TELLING HIS STAFF TO

02:42PM 18 RESPOND TO YOUR REQUESTS; CORRECT?

02:42PM 19 A. YES.

02:42PM 20 Q. AND YOU DESCRIBED SOME ISSUES WITH THE TIMELINESS AND

02:43PM 21 THOROUGHNESS OF THE RESPONSES FROM SOME OF THE STAFF; CORRECT?

02:43PM 22 A. YES.

02:43PM 23 Q. OKAY. AND I THINK YOU DESCRIBED ONE INDIVIDUAL, MR. GEE,

02:43PM 24 AS SOMEWHAT LOOKING LIKE A DEER IN THE HEADLIGHTS IN RESPONSE

02:43PM 25 TO SOME OF YOUR QUESTIONS AND REQUESTS; CORRECT?

02:43PM 1 A. YES.

02:43PM 2 Q. AND HE WAS THE QUALITY ASSURANCE/QUALITY CONTROL MANAGER?

02:43PM 3 A. YES.

02:43PM 4 Q. AND SOME OF THE RECORDS THAT YOU WERE REQUESTING RELATED

02:43PM 5 TO TESTING ON THE EDISON; CORRECT?

02:43PM 6 A. MOST. NOT MR. GEE.

02:43PM 7 Q. YOUR REQUEST FROM OTHER INDIVIDUALS?

02:43PM 8 A. YES.

02:43PM 9 Q. OKAY. BUT YOU DID REQUEST THOSE KIND OF RECORDS?

02:43PM 10 A. I DID.

02:43PM 11 Q. AND THEN QUALITY CONTROL WAS ONE OF THOSE SETS OF RECORDS?

02:43PM 12 A. YES.

02:43PM 13 Q. AND IS IT CORRECT THAT YOU UNDERSTOOD THAT SOME OF THE

02:44PM 14 INFORMATION, SOME OF WHAT YOU WERE REQUESTING RELATING TO

02:44PM 15 EDISON QUALITY CONTROL RECORDS, THAT DATA WENT STRAIGHT TO

02:44PM 16 THERANOS'S LABORATORY INFORMATION SYSTEMS, THAT'S WHERE THE

02:44PM 17 INFORMATION WAS PULLED FROM; CORRECT?

02:44PM 18 A. IT WAS MY UNDERSTANDING THAT THEY HAD TO PULL THE

02:44PM 19 INFORMATION FROM SOMEWHERE.

02:44PM 20 I DON'T RECALL WHERE THEY HAD TO PULL IT FROM.

02:44PM 21 Q. OKAY. IN YOUR WORK AS A CMS SUPERVISOR AND SENIOR

02:44PM 22 EXECUTIVE NOW, BUT ALSO AS A SURVEYOR IN THE PAST, YOU

02:44PM 23 UNDERSTAND THAT LABORATORIES MAINTAIN RECORDS IN SOME SORT OF

02:44PM 24 DATABASE OF SOME SORT; CORRECT?

02:44PM 25 A. SOME LABORATORIES DO. SOME LABORATORIES DO NOT.

02:44PM 1 Q. SOME LABS DO IT OLD SCHOOL PAPER RECORDS; CORRECT?

02:44PM 2 A. THAT'S CORRECT.

02:44PM 3 Q. THERANOS KEPT THEIR RECORDS PRINCIPALLY ELECTRONIC;

02:44PM 4 CORRECT?

02:44PM 5 A. I CANNOT SPEAK TO HOW THEY KEPT THEIR RECORDS.

02:44PM 6 Q. YOU RECEIVED ELECTRONIC RECORDS; CORRECT?

02:44PM 7 A. I RECEIVED PRINTOUTS, YES.

02:44PM 8 Q. OKAY. NOW TO GET BACK TO THE SURVEY REPORT THAT YOU WERE

02:45PM 9 ASKED QUESTIONS ABOUT BY MR. LEACH YESTERDAY.

02:45PM 10 SO THAT SURVEY REPORT IS QUITE LONG. IT'S ABOUT 20 PAGES

02:45PM 11 OR SO.

02:45PM 12 DO YOU RECALL THAT?

02:45PM 13 A. I DO.

02:45PM 14 Q. AND THE SURVEY REPORT INCLUDES, I GUESS, DESCRIPTIONS, OR

02:45PM 15 ACTUALLY MAYBE QUOTATIONS OF THE RELEVANT REGULATORY

02:45PM 16 REQUIREMENTS; CORRECT?

02:45PM 17 A. YES.

02:45PM 18 Q. AND THEN RECITATION OF THE FACTS OR EVIDENCE THAT YOU OR

02:45PM 19 MR. YAMAMOTO IDENTIFIED TO SUPPORT YOUR FINDINGS; CORRECT?

02:45PM 20 A. YES, TO SUPPORT THE NONCOMPLIANCE.

02:45PM 21 Q. OKAY. SO IS IT FAIR TO SAY THAT THAT SURVEY REPORT IS THE

02:45PM 22 BEST EVIDENCE OF YOUR FINDINGS OF THE NONCOMPLIANCE BY THERANOS

02:45PM 23 IN YOUR SURVEY?

02:45PM 24 A. THAT IS THE SURVEY REPORT THAT LISTS THE DEFICIENT

02:45PM 25 PRACTICES FOR THE INFORMATION THAT WE LOOKED AT DURING THE

02:45PM 1 SURVEY.

02:45PM 2 Q. OKAY. AND SO THE SURVEY REPORT CONTAINS ALL OF THE

02:46PM 3 EVIDENCE THAT YOU IDENTIFIED TO SUPPORT YOUR FINDINGS OF

02:46PM 4 NONCOMPLIANCE?

02:46PM 5 A. YES.

02:46PM 6 Q. DO YOU HAVE A BINDER UP THERE THAT -- I SHOULD HAVE SAID

02:46PM 7 THE GOVERNMENT'S BINDER?

02:46PM 8 A. YES.

02:46PM 9 Q. THE WHITE ONE. YES, I THINK THAT'S IT.

02:46PM 10 AND IF YOU COULD TAKE A LOOK AT EXHIBIT 4621.

02:46PM 11 AND 4621 IS THE JANUARY 25TH, 2016 SURVEY REPORT; CORRECT?

02:46PM 12 A. THE -- THAT'S THE DATE OF THE LETTER. THE SURVEY IS DATED

02:47PM 13 NOVEMBER 20TH, 2015.

02:47PM 14 Q. OKAY. THE LETTER IS I GUESS ATTACHED TO THE -- THE SURVEY

02:47PM 15 REPORT IS ATTACHED TO THE LETTER?

02:47PM 16 A. THAT'S CORRECT.

02:47PM 17 Q. OKAY. AND IF WE CAN TURN TO -- AND IT WILL BE UP ON THE

02:47PM 18 SCREEN AS WELL. THE SCREEN MAY BE EASIER FOR YOU THAN FLIPPING

02:47PM 19 THROUGH THE BOOK.

02:47PM 20 BUT IF WE CAN TAKE A LOOK STARTING AT PAGE 41, AND I'M

02:47PM 21 LOOKING AT THE EXHIBIT PAGE, NOT THE DOCUMENT PAGE. SO THE

02:47PM 22 PAGE AT THE BOTTOM OF THE DOCUMENT.

02:47PM 23 AND WE'RE AT D-TAG 5481.

02:47PM 24 DO YOU SEE THAT?

02:47PM 25 A. I DO.

02:47PM 1 Q. AND IF YOU LOOK AT PAGE 40, ABOUT MOST OF THE WAY UP,
02:47PM 2 D-TAG 5481, THAT'S CONTROL PROCEDURES.
02:47PM 3 DO YOU SEE THAT?
02:47PM 4 A. I DO.
02:47PM 5 Q. OKAY. AND THEN THIS IS A STANDARD LEVEL NONCOMPLIANCE;
02:48PM 6 CORRECT?
02:48PM 7 A. YES.
02:48PM 8 Q. OKAY.
02:48PM 9 A. IT'S CITED AS A STANDARD.
02:48PM 10 Q. AND THEN IF WE TAKE A LOOK AT NUMBER 2, WHICH AGAIN IS ON
02:48PM 11 PAGE 41, THAT FIRST PARAGRAPH OF THE REPORT SAYS, "BASED ON
02:48PM 12 REVIEW OF THE QUALITY CONTROL PROCEDURE RECORDS AND RAW DATA
02:48PM 13 FROM PATIENT TEST RUNS AND INTERVIEW WITH THE GENERAL
02:48PM 14 SUPERVISOR, THE LABORATORY FAILED TO ENSURE THAT THE QC WAS
02:48PM 15 ACCEPTABLE FOR THE THERANOS PROPRIETARY SYSTEM PRIOR TO
02:48PM 16 REPORTING PATIENT RESULTS."
02:48PM 17 DO YOU SEE THAT?
02:48PM 18 A. I DO.
02:48PM 19 Q. OKAY. AND SO THIS IS ONE OF THE CONTROL PROCEDURES
02:48PM 20 STANDARD LEVEL NONCOMPLIANCE; CORRECT?
02:48PM 21 A. YES.
02:48PM 22 Q. AND THE NEXT PARAGRAPH I'M NOT GOING TO READ IT ALL, BUT
02:48PM 23 THE NEXT PARAGRAPH, JUST TO ORIENT US A BIT, THE NEXT PARAGRAPH
02:49PM 24 SUB A READS, "CL SOP-15026 REVISION A, EDISON 3.5 THERANOS
02:49PM 25 SYSTEM DAILY QC PROCEDURES, STATED THE FOLLOWING: FOR ANY

02:49PM 1 SINGLE EDISON INSTRUMENT, REJECT QC IF EITHER LEVEL IS GREATER
02:49PM 2 THAN 2 SD OR IF EITHER LEVEL FALLS ON THE SAME SIDE OF THE MEAN
02:49PM 3 FOR 10 CONSECUTIVE DAYS."

02:49PM 4 DO YOU SEE THAT?

02:49PM 5 A. I DO.

02:49PM 6 Q. AND THEN ON THE NEXT PAGE, ON PAGE 42 THERE'S A
02:49PM 7 DESCRIPTION OF YOUR FINDINGS.

02:49PM 8 DO YOU SEE THAT?

02:49PM 9 A. YES.

02:49PM 10 Q. OKAY. AND, FOR EXAMPLE, IN SUB C THE REPORT SAYS, "THE
02:49PM 11 GENERAL SUPERVISOR STATED THAT WHEN THE QC WAS UNACCEPTABLE,
02:49PM 12 THE TPS DEVICE LOCKED OUT PATIENT TESTING FOR 24 HOURS OR UNTIL
02:49PM 13 THE QC WAS ACCEPTABLE, AND IF THE QC WAS UNACCEPTABLE, ANOTHER
02:50PM 14 DEVICE WOULD BE USED FOR TESTING."

02:50PM 15 DO YOU SEE THAT?

02:50PM 16 A. I DO.

02:50PM 17 Q. OKAY. AND THEN YOU IDENTIFY SOME EVIDENCE SHOWING
02:50PM 18 THERANOS'S NONCOMPLIANCE WITH ITS QC POLICY; CORRECT?

02:50PM 19 A. YES.

02:50PM 20 Q. AND JUST TO BE CLEAR, IT'S THE FAILURE TO FOLLOW THE
02:50PM 21 POLICY THAT'S THE VIOLATION; CORRECT?

02:50PM 22 A. THE VIOLATION IS THAT THEY DID NOT HAVE ACCEPTABLE CONTROL
02:50PM 23 VALUES BEFORE THEY RELEASED PATIENT TEST RESULTS.

02:50PM 24 Q. WHICH WAS IN VIOLATION OF THE LAB'S POLICY; CORRECT?

02:50PM 25 A. IT'S A REQUIREMENT THAT QUALITY CONTROL BE ACCEPTABLE

02:50PM 1 PRIOR TO RELEASING PATIENT TEST RESULTS.

02:50PM 2 Q. AND --

02:50PM 3 A. AND THEY DIDN'T FOLLOW THEIR PROCEDURE.

02:50PM 4 BUT THEY DIDN'T MEET THE REQUIREMENT FOR ACCEPTABLE

02:51PM 5 CONTROLS BEFORE REPORTING PATIENT RESULTS.

02:51PM 6 Q. CORRECT. AND WE'LL LOOK AT SOME OF THESE.

02:51PM 7 SO IF YOU LOOK AT SUB D. UNDER SUB D THERE'S AN

02:51PM 8 IDENTIFICATION "QC RECORDS FOR SEX HORMONE BINDING GLOBULIN."

02:51PM 9 DO YOU SEE THAT?

02:51PM 10 A. I DO.

02:51PM 11 Q. "SHOWED ON A DEVICE," AND THERE'S A DEVICE NUMBER.

02:51PM 12 DO YOU SEE THAT?

02:51PM 13 A. I DO.

02:51PM 14 Q. "QC LEVEL 2'S 24-HOUR EXPIRATION WAS ON 8/14/14 AT 18:54

02:51PM 15 AND WAS NOT RUN AGAIN UNTIL 8/15/2014 AT 05."

02:51PM 16 DO YOU SEE THAT?

02:51PM 17 A. YES.

02:51PM 18 Q. AND SO IT LOOKS LIKE THE 24-HOUR EXPIRATION PERIOD ON THE

02:51PM 19 PRIOR QC EXPIRED AT, WHAT IS THAT, 6:54 P.M.?

02:51PM 20 A. YES.

02:51PM 21 Q. I GUESS THAT'S MILITARY TIME, OR SOMETHING LIKE THAT.

02:51PM 22 IT'S 6:54 P.M.?

02:51PM 23 A. THAT'S HOW IT WAS REFLECTED ON THE QC PRINTOUT.

02:51PM 24 Q. OKAY. AND IT WASN'T RUN AGAIN UNTIL IT LOOKS LIKE JUST

02:52PM 25 AFTER MIDNIGHT; CORRECT?

02:52PM 1 A. YES.

02:52PM 2 Q. BUT A PATIENT'S RESULT WAS RUN SOMEWHERE AROUND 7:09 P.M.

02:52PM 3 DO YOU SEE THAT?

02:52PM 4 A. I DO.

02:52PM 5 Q. SO THAT PATIENT RUN SHOULDN'T HAVE HAPPENED UNTIL AFTER

02:52PM 6 THE NEXT QC PASSED; CORRECT?

02:52PM 7 A. YES.

02:52PM 8 Q. SO THE RUNNING OF IT AFTER THE EXPIRATION OF THE PRIOR QC,

02:52PM 9 THAT WAS THE VIOLATION; CORRECT?

02:52PM 10 A. THE VIOLATION WAS THAT THEY DIDN'T HAVE ACCEPTABLE QC

02:52PM 11 BEFORE THEY RAN THE REPORTED PATIENT RESULTS.

02:52PM 12 Q. AND IN THIS INSTANCE IT WAS THE PRIOR QC PASSED, BUT IT

02:52PM 13 EXPIRED AND THEY DIDN'T RUN ANOTHER QC BEFORE RUNNING THIS

02:52PM 14 PATIENT SAMPLE; CORRECT?

02:52PM 15 A. I DO NOT KNOW IF THE 24-HOUR -- 24-HOUR QUALITY CONTROL

02:52PM 16 WAS ACCEPTABLE OR NOT BECAUSE IT'S NOT IN THE 2567.

02:52PM 17 THE VIOLATION WAS THAT THEY REPORTED PATIENT TEST RESULTS

02:52PM 18 WITHOUT ACCEPTABLE QUALITY CONTROL.

02:52PM 19 Q. SO IN THIS INSTANCE THEN, YOU DON'T KNOW, OR YOU'RE NOT

02:53PM 20 REPORTING THAT A PATIENT RESULT WAS ISSUED AFTER A FAILED QC;

02:53PM 21 CORRECT?

02:53PM 22 A. NOT IN THIS PARTICULAR CITATION.

02:53PM 23 Q. OKAY. BUT IN OTHER CITATIONS, THERE WERE FAILED QC'S AND

02:53PM 24 RESULTS?

02:53PM 25 A. I BELIEVE SO. I BELIEVE SO.

02:53PM 1 Q. OKAY. NOW, IN THIS SECTION THAT WE'RE TALKING ABOUT, THIS
02:53PM 2 QC POLICY NONCOMPLIANCE RELATING TO THE EDISON TESTING, IT'S
02:53PM 3 CORRECT THAT THE REPORT IDENTIFIES NO EVIDENCE THAT PATIENTS
02:53PM 4 ACTUALLY RECEIVED INACCURATE RESULTS; CORRECT?
02:53PM 5 A. THAT'S NOT WHAT THIS CITATION IS ABOUT, AND I CAN'T SPEAK
02:53PM 6 TO THAT, WHETHER THEY RECEIVED INACCURATE RESULTS OR NOT.
02:53PM 7 Q. OKAY. BECAUSE THAT'S NOT WHAT THE CITATION IS ABOUT?
02:53PM 8 A. THAT'S NOT WHAT THE CITATION IS ABOUT.
02:53PM 9 Q. OKAY.
02:53PM 10 AND THIS CITATION IDENTIFIES NO EVIDENCE THAT PATIENTS
02:53PM 11 WERE ACTUALLY AFFECTED BY THE DEFICIENCY; CORRECT?
02:53PM 12 A. I CAN SAY THAT THERE WAS POTENTIAL FOR THEM TO BE
02:54PM 13 AFFECTED, BUT I CANNOT SPECIFICALLY SAY THAT A SPECIFIC PATIENT
02:54PM 14 WAS AFFECTED.
02:54PM 15 Q. AND THE REPORT IDENTIFIES NO PATIENTS AFFECTED BY THE
02:54PM 16 NONCOMPLIANCE; CORRECT?
02:54PM 17 A. THE CITATIONS INCLUDE A PATIENT IDENTIFIER TO IDENTIFY THE
02:54PM 18 PATIENT THAT WOULD HAVE BEEN -- COULD HAVE BEEN AFFECTED BY
02:54PM 19 THIS DEFICIENT PRACTICE.
02:54PM 20 Q. BUT MY POINT IS THAT YOUR WORK DID NOT REACH ANY
02:54PM 21 CONCLUSION THAT THE PATIENT IDENTIFIED WAS ACTUALLY AFFECTED BY
02:54PM 22 THE NONCOMPLIANCE; CORRECT?
02:54PM 23 A. NO, BECAUSE THAT'S NOT WHAT THE CITATION IS ABOUT.
02:54PM 24 Q. OKAY. NOW, FOR EXAMPLE, THIS ISSUE TOOK PLACE THAT WE
02:54PM 25 JUST TALKED ABOUT ON SUB D ON PAGE 42 IN AUGUST OF 2014.

02:54PM 1 DO YOU SEE THAT?

02:54PM 2 A. I DO.

02:54PM 3 Q. NOW, WITHIN THE LABORATORY AT THAT TIME, THE CLINICAL

02:55PM 4 LABORATORY, THE LABORATORY DIRECTOR ULTIMATELY HAS

02:55PM 5 RESPONSIBILITY TO ENSURE THAT HIS STAFF IS FOLLOWING CLIA AND

02:55PM 6 THE POLICIES OF THE LAB; CORRECT?

02:55PM 7 A. YES.

02:55PM 8 Q. AND THE LAB DIRECTOR MAY EVEN DELEGATE SOME OF THOSE

02:55PM 9 RESPONSIBILITIES TO OTHER QUALIFIED PERSONS; CORRECT?

02:55PM 10 A. CORRECT.

02:55PM 11 Q. OKAY. IN ADDITION, IN THIS PASSAGE THAT WE'RE LOOKING AT

02:55PM 12 RIGHT HERE UNDER D-TAG 5481 RELATING TO THE QC NONCOMPLIANCE

02:55PM 13 THAT WE JUST TALKED ABOUT, THE REPORT IDENTIFIES NO EVIDENCE

02:55PM 14 THAT MR. BALWANI WAS AWARE OF THIS QC NONCOMPLIANCE PRIOR TO

02:55PM 15 THE SURVEY; CORRECT?

02:55PM 16 A. IT DOES NOT.

02:55PM 17 Q. IF WE CAN TURN TO PAGE 9, OR PUT THAT UP ON THE SCREEN.

02:56PM 18 AND THAT PAGE 9 IS D-TAG 5311.

02:56PM 19 AND AT THE TOP OF THE SCREEN AND THE PAGE, 5311 IS

02:56PM 20 DESCRIBED AS SPECIMEN SUBMISSION HANDLING AND REFERRAL.

02:56PM 21 DO YOU SEE THAT?

02:56PM 22 A. I DO.

02:56PM 23 Q. AND THIS IS ALSO A STANDARD LEVEL DEFICIENCY LIKE THE LAST

02:56PM 24 ONE WE TALKED ABOUT; CORRECT?

02:56PM 25 A. IT IS.

02:56PM 1 Q. AND HERE THE NONCOMPLIANCE IS DESCRIBED AS THIS STANDARD
02:56PM 2 IS NOT MET AS EVIDENCED BY: PREANALYTIC POLICIES AND
02:57PM 3 PROCEDURES -- I'M SORRY. LET ME BACK UP.
02:57PM 4 "THIS STANDARD IS NOT MET AS EVIDENCED BY," AND THEN,
02:57PM 5 "BASED ON LABORATORY PERSONNEL INTERVIEWS, AND PREANALYTIC
02:57PM 6 POLICIES AND PROCEDURES RECORD REVIEW. ON SEPTEMBER 23RD,
02:57PM 7 2015, THE LABORATORY FAILED TO ESTABLISH WRITTEN POLICIES AND
02:57PM 8 PROCEDURES FOR PATIENT SPECIMEN HANDLING," AND THEN IT
02:57PM 9 DESCRIBES THE FINDINGS INCLUDED.
02:57PM 10 "IT WAS THE PRACTICE OF THE LABORATORY TO REQUIRE THAT ALL
02:57PM 11 PATIENT SPECIMENS RECEIVED BE LABELLED WITH LABORATORY
02:57PM 12 GENERATED BAR CODES THAT WERE ISSUED AT THE POINT OF SPECIMEN
02:57PM 13 COLLECTION."
02:57PM 14 SO I GUESS IT WAS DESCRIBED TO YOU THAT THE LAB HAD A
02:57PM 15 PRACTICE OF LABELLING SPECIMENS UPON RECEIPT IN THIS
02:57PM 16 PREANALYTIC TIME PERIOD; CORRECT?
02:57PM 17 A. THIS IS MR. YAMAMOTO'S CITATION, NOT MINE.
02:57PM 18 Q. OKAY. SO YOU'RE NOT FAMILIAR WITH THE DETAILS?
02:57PM 19 A. I DID NOT CITE THIS. HE CITED THIS.
02:57PM 20 Q. BUT THE BOTH OF YOU KIND OF WORKED TOGETHER ON THE
02:57PM 21 ULTIMATE FINAL PRODUCT OF THE SURVEY REPORT; CORRECT?
02:58PM 22 A. WE WORKED ON EACH OF OUR PARTS AND COMBINED THEM INTO ONE,
02:58PM 23 YES.
02:58PM 24 Q. OKAY. BUT THIS PART ISN'T YOURS?
02:58PM 25 A. THAT IS NOT.

02:58PM 1 Q. OKAY. THEN THE REPORT CONTINUES, "THE LABORATORY
02:58PM 2 MAINTAINED NO WRITTEN POLICIES AND PROCEDURES DETAILING THIS
02:58PM 3 PATIENT SPECIMEN LABELLING POLICY AND PROCEDURE."
02:58PM 4 DO YOU SEE THAT?
02:58PM 5 A. I DO.
02:58PM 6 Q. SO IT SOUNDS LIKE THEY HAD A PRACTICE, BUT NOT ACTUALLY A
02:58PM 7 WRITTEN POLICY TO GOVERN THE PRACTICE; IS THAT A FAIR READING?
02:58PM 8 A. IT APPEARS FROM SUB B THAT THEY DID NOT HAVE A WRITTEN
02:58PM 9 POLICY, A PROCEDURE ABOUT PATIENT SPECIMEN LABELLING.
02:58PM 10 Q. OKAY. AND THEN THAT SECTION OF THE REPORT CONTINUED,
02:58PM 11 "ACCORDING TO LABORATORY RECORDS, THE LABORATORY PERFORMED
02:58PM 12 APPROXIMATELY 890,000 PATIENT TESTS ANNUALLY."
02:59PM 13 DO YOU SEE THAT?
02:59PM 14 A. I DO.
02:59PM 15 Q. AND THAT'S CONSISTENT WITH SOME OF THE DOCUMENTS OR THE
02:59PM 16 RECORDS THAT WE LOOKED AT YESTERDAY RELATING TO THE APPLICATION
02:59PM 17 FOR RENEWAL BY THE LAB; CORRECT?
02:59PM 18 A. YES.
02:59PM 19 Q. OKAY. IF WE CAN TURN TO PAGE 51.
02:59PM 20 51 RELATES TO WHAT IS D-TAG 5791, ANALYTIC SYSTEMS QUALITY
02:59PM 21 ASSESSMENT.
02:59PM 22 DO YOU SEE THAT?
02:59PM 23 A. I DO.
02:59PM 24 Q. AND THIS ISSUE IS DESCRIBED AS, "THE LABORATORY MUST
02:59PM 25 ESTABLISH AND FOLLOW WRITTEN POLICIES AND PROCEDURES FOR AN

02:59PM 1 ONGOING MECHANISM TO MONITOR, ASSESS, AND WHEN INDICATED,

02:59PM 2 CORRECT PROBLEMS IDENTIFIED IN THE ANALYTICAL SYSTEMS SPECIFIED

03:00PM 3 IN," AND I'M NOT SURE IF THE NEXT PAGE CONTINUES THAT SENTENCE

03:00PM 4 FULLY, BUT I'LL CONTINUE WITH THE NEXT PAGE.

03:00PM 5 THIS ISSUE, IS, AGAIN, IDENTIFIED AS A STANDARD LEVEL

03:00PM 6 DEFICIENCY; CORRECT?

03:00PM 7 A. YES.

03:00PM 8 Q. AND THIS DEFICIENCY, IF WE CONTINUE ON PAGE 2, I THINK YOU

03:00PM 9 REVIEWED THIS WITH THE GOVERNMENT, RELATES TO, AGAIN, QUALITY

03:00PM 10 CONTROL RELATING TO THE EDISON.

03:00PM 11 DO YOU SEE THAT AT THE BOTTOM OF PAGE 53?

03:00PM 12 A. YES.

03:00PM 13 Q. AND AGAIN, IF YOU TURN TO THE NEXT PAGE.

03:00PM 14 THIS IS THE ISSUE WHERE IT LOOKS LIKE -- AND I THINK THIS

03:00PM 15 IS YOUR PORTION OF THE SURVEY; CORRECT? THIS IS YOUR WORK?

03:00PM 16 A. THIS IS MY WORK.

03:00PM 17 Q. OKAY. AND YOU REVIEWED THE MASTER VALIDATION PLAN FOR

03:00PM 18 ROUTINE CHEMISTRY ASSAYS ON THERANOS'S DEVICES AS DESCRIBED IN

03:00PM 19 THE REPORT?

03:00PM 20 A. YES.

03:00PM 21 Q. AND THAT PLAN REQUIRED PERCENT CV OF REPLICATES TO BE NOT

03:01PM 22 MORE THAN 15 PERCENT; IS THAT RIGHT?

03:01PM 23 A. THAT'S TRUE.

03:01PM 24 Q. AND THEN AS YOU DESCRIBED WITH MR. LEACH, YOU IDENTIFIED

03:01PM 25 INSTANCES WHERE THE QC WAS NOT MEETING THAT REQUIREMENT;

03:01PM 1 CORRECT?

03:01PM 2 A. YES.

03:01PM 3 Q. AND THAT WAS, AGAIN, THE QC NOT MEETING THE LAB'S OWN PLAN

03:01PM 4 FOR THESE ASSAYS; CORRECT?

03:01PM 5 A. YES.

03:01PM 6 Q. AND THAT'S THE NONCOMPLIANCE; CORRECT?

03:01PM 7 A. THE NONCOMPLIANCE IS THAT THEY DID NOT IDENTIFY THE

03:01PM 8 PROBLEM WITH THE HIGH CV'S AND COME UP WITH A PLAN TO

03:01PM 9 INVESTIGATE IT AND CORRECT THE PROBLEM.

03:01PM 10 THEY HAD NOTHING IN THEIR QUALITY ASSESSMENT PLAN THAT

03:01PM 11 WOULD IDENTIFY AND CORRECT THIS ISSUE, SO IT CONTINUED.

03:02PM 12 Q. AND AS YOU DESCRIBED TO MR. LEACH, THESE ARE UNDESIRABLE

03:02PM 13 RESULTS, THE CV NUMBERS THAT YOU SEE ON THE PAGE; CORRECT?

03:02PM 14 A. YES.

03:02PM 15 Q. BUT THE SURVEY REPORT IDENTIFIES NO EVIDENCE THAT

03:02PM 16 MR. BALWANI WAS AWARE OF THIS SPECIFIC QC NONCOMPLIANCE PRIOR

03:02PM 17 TO YOUR SURVEY; CORRECT?

03:02PM 18 A. NOT THAT I'M AWARE.

03:02PM 19 Q. JUST TO CONFIRM HERE. SO THE VIOLATION IS NOT HAVING A

03:02PM 20 QUALITY ASSURANCE PLAN?

03:02PM 21 A. THEY HAVE TO HAVE A QUALITY ASSURANCE PLAN THAT WILL

03:02PM 22 IDENTIFY ISSUES. THEY HAVE TO HAVE POLICIES AND PROCEDURES TO

03:02PM 23 IDENTIFY PROBLEMS, CORRECT THE PROBLEMS, AND MAKE SURE THAT

03:02PM 24 THEY DON'T RECUR.

03:02PM 25 Q. AND THAT'S THE LAB DIRECTOR'S RESPONSIBILITY; RIGHT?

03:02PM 1 A. THAT'S A LABORATORY -- IT'S A REQUIREMENT FOR THE
03:03PM 2 LABORATORY.

03:03PM 3 Q. AND THE LAB DIRECTOR IS RESPONSIBLE FOR THE LAB; CORRECT?

03:03PM 4 A. YES.

03:03PM 5 Q. AND ANY SUCH PLANS THAT YOU DESCRIBED THAT THIS LAB
03:03PM 6 APPARENTLY DIDN'T HAVE, THE LAB DIRECTOR WOULD NEED TO
03:03PM 7 IMPLEMENT AND APPROVE THOSE PLANS; CORRECT?

03:03PM 8 A. YES, THE LABORATORY DIRECTOR HAS TO APPROVE OF THE
03:03PM 9 PROCEDURES.

03:03PM 10 Q. IF WE CAN GO TO PAGE 16.

03:03PM 11 THE COURT: WHY DON'T WE TAKE A BREAK NOW? CAN WE
03:03PM 12 TAKE 15 MINUTES, FOLKS? CAN WE TAKE 15 MINUTES? AND THEN
03:03PM 13 WE'LL RETURN TO PAGE 16.

03:03PM 14 (RECESS FROM 3:03 P.M. UNTIL 3:20 P.M.)

03:20PM 15 THE COURT: PLEASE BE SEATED. WE'RE BACK ON THE
03:20PM 16 RECORD. ALL PARTIES PREVIOUSLY PRESENT ARE PRESENT ONCE AGAIN.

03:20PM 17 MS. BENNETT, I FAILED TO ASK YOU TO STATE YOUR NAME WHEN
03:20PM 18 YOU SAT DOWN EARLIER THIS AFTERNOON.

03:20PM 19 WE KNOW WHO YOU ARE NOW. I JUST WANT TO REMIND YOU, AND I
03:20PM 20 FAILED TO TELL YOU, YOU ARE STILL UNDER OATH. AND YOU
03:20PM 21 RECOGNIZED THAT WHEN YOU BEGAN YOUR TESTIMONY TODAY, DID YOU?

03:20PM 22 THE WITNESS: I DID.

03:20PM 23 THE COURT: THANK YOU VERY MUCH. I APOLOGIZE FOR
03:20PM 24 THAT INCONVENIENCE.

03:20PM 25 COUNSEL.

03:20PM 1 MR. CAZARES: THANK YOU, YOUR HONOR.

03:20PM 2 Q. MS. BENNETT, I HAVE SOME FURTHER QUESTIONS AGAIN RELATING

03:20PM 3 TO THE SURVEY REPORT THAT WE WERE JUST TALKING ABOUT.

03:20PM 4 IF WE CAN PUT UP ON THE SCREEN AND START WITH PAGE 58 AT

03:21PM 5 D-TAG 5793.

03:21PM 6 AND I THINK YOU TALKED A LITTLE BIT ABOUT THIS TOPIC WITH

03:21PM 7 THE GOVERNMENT YESTERDAY.

03:21PM 8 AND SO D-TAG 5793 IS THE SUBJECT OF ANALYTIC SYSTEMS

03:21PM 9 QUALITY ASSESSMENT.

03:21PM 10 DO YOU SEE THAT?

03:21PM 11 A. I DO.

03:21PM 12 Q. AND THEN, AGAIN, ONE OF THE STANDARD LEVEL NONCOMPLIANCE;

03:21PM 13 CORRECT?

03:22PM 14 A. YES.

03:22PM 15 Q. AND THE DESCRIPTION OF THE REQUIREMENT IS "THE ANALYTIC

03:22PM 16 SYSTEMS QUALITY ASSESSMENT MUST INCLUDE A REVIEW OF THE

03:22PM 17 EFFECTIVENESS OF CORRECTIVE ACTIONS TAKEN TO RESOLVE PROBLEMS,

03:22PM 18 REVISION OF POLICIES AND PROCEDURES NECESSARY TO PREVENT

03:22PM 19 REOCCURRENCE OF PROBLEMS AND DISCUSSION OF ANALYTIC SYSTEMS

03:22PM 20 QUALITY ASSESSMENT REVIEWS WITH APPROPRIATE STAFF."

03:22PM 21 DO YOU SEE THAT?

03:22PM 22 A. I DO.

03:22PM 23 Q. AND THEN IF WE TURN TO PAGE 71 AT ITEM 9 NEAR THE BOTTOM

03:22PM 24 OF 71.

03:22PM 25 DO YOU SEE THAT?

03:22PM 1 A. I DO.

03:22PM 2 Q. AND ITEM 9 READS, "BASED ON REVIEW OF THE ALTERNATIVE

03:22PM 3 ASSESSMENT PROCEDURE AND RESULTS OF AAP FROM AUGUST 2014

03:22PM 4 THROUGH MARCH 2015, THE LABORATORY FAILED TO IDENTIFY THROUGH

03:22PM 5 THE QUALITY ASSESSMENT ACTIVITIES THAT THE AAP FOR THE THERANOS

03:22PM 6 PROPRIETARY SYSTEM WAS NOT PERFORMED EVERY 6 MONTHS AND WAS NOT

03:22PM 7 REVIEWED AND APPROVED BY THE LABORATORY DIRECTOR IN A TIMELY

03:22PM 8 MANNER AS REQUIRED BY THE LABORATORY'S PROCEDURES, AND

03:22PM 9 THEREFORE, INEFFECTIVE."

03:22PM 10 DO YOU SEE THAT?

03:22PM 11 A. I DO.

03:23PM 12 Q. AND WAS THIS ONE OF YOUR -- YOUR WORK PRODUCT OR

03:23PM 13 MR. YAMAMOTO?

03:23PM 14 A. THIS IS MINE.

03:23PM 15 Q. OKAY. AND THE FINDINGS ARE DESCRIBED AS, A, "CL SOP-00020

03:23PM 16 REVISION B PROFICIENCY TESTING FOR THERANOS LAB-DEVELOPED TESTS

03:23PM 17 EFFECTIVE JANUARY 1, 2014, STATED IN SECTION 3.1 THAT THE

03:23PM 18 TECHNICAL SUPERVISOR WAS RESPONSIBLE FOR ENSURING THAT THE AAP

03:23PM 19 WAS CONDUCTED EVERY 6 MONTHS FOR ALL ANALYTES."

03:23PM 20 DO YOU SEE THAT?

03:23PM 21 A. I DO.

03:23PM 22 Q. AND THEN THE NEXT PARAGRAPH, SUB B, DESCRIBES THE

03:23PM 23 TECHNICAL SUPERVISOR RESPONSIBLE FOR EVALUATING.

03:23PM 24 DO YOU SEE THAT?

03:23PM 25 A. I DO.

03:23PM 1 Q. OKAY. AND THEN BELOW THAT ON SUB C, THERE'S A DESCRIPTION
03:23PM 2 OF "REVIEW OF THE AAP RESULT FORMS," AND THERE'S A DOCUMENT
03:23PM 3 I.D., "REVEALED THAT THE AAP WAS PERFORMED ON AUGUST 18TH,
03:24PM 4 2014, OCTOBER 21ST, 2014, AND MARCH 13TH, 2015."
03:24PM 5 DO YOU SEE THAT?
03:24PM 6 A. I DO.
03:24PM 7 Q. AND THE CITATION HERE, DOES THAT INDICATE THAT YOU
03:24PM 8 ACTUALLY RECEIVED THE RECORDS FOR THAT; CORRECT?
03:24PM 9 A. I DID.
03:24PM 10 Q. OKAY. AND SO THE LAB ACTUALLY PERFORMED THE AAP
03:24PM 11 PROCEDURE; CORRECT?
03:24PM 12 A. ON THOSE DATES.
03:24PM 13 Q. AS REFLECTED IN THE EVIDENCE THAT YOU WERE GIVEN?
03:24PM 14 A. YES.
03:24PM 15 Q. AND THEN YOU CONTINUE, "ALL THREE RESULT FORMS DID NOT
03:24PM 16 INCLUDE A DOCUMENTED EVALUATION BY THE TECHNICAL SUPERVISOR."
03:24PM 17 DO YOU SEE THAT?
03:24PM 18 A. I DO.
03:24PM 19 Q. AND THEN THE SECTION CONTINUES, "THE RESULT DOCUMENTS FROM
03:24PM 20 AUGUST 18, 2014, AND MARCH 15, 2015, WERE NOT SIGNED BY THE
03:24PM 21 LABORATORY DIRECTOR UNTIL NOVEMBER 15TH, 2015, AND THE RESULT
03:25PM 22 FORM FROM OCTOBER 12TH, 2014, WAS NOT SIGNED BY THE LAB
03:25PM 23 DIRECTOR."
03:25PM 24 DO YOU SEE THAT?
03:25PM 25 A. I DO.

03:25PM 1 Q. AND SO ONE OF THE ISSUES HERE IS THAT THE TECHNICAL
03:25PM 2 SUPERVISOR, THERE WAS NO DOCUMENTATION THAT THE TECHNICAL
03:25PM 3 SUPERVISOR EVALUATED THE AAP RESULTS; CORRECT?
03:25PM 4 A. THAT'S TRUE.
03:25PM 5 Q. AND THEN THE SIGNATURES AND APPROVAL BY THE LAB DIRECTOR
03:25PM 6 WERE MISSING FOR ONE AND WERE NOT SIGNED UNTIL 2015 FOR OTHERS;
03:25PM 7 CORRECT?
03:25PM 8 A. CORRECT, RIGHT BEFORE WE CAME BACK IN NOVEMBER.
03:25PM 9 Q. BUT, AGAIN, IT DOES APPEAR THAT THE LAB PERFORMED THE AAP
03:25PM 10 PROCEDURE; CORRECT?
03:25PM 11 A. IT DOES.
03:25PM 12 Q. AND IN THIS PASSAGE OF THE SURVEY REPORT RELATING TO THIS
03:25PM 13 AAP ISSUE, I GUESS IS THE ISSUE THEN THAT THE LAB DIDN'T MEET
03:26PM 14 THE SIX MONTH REQUIREMENT; IS THAT CORRECT?
03:26PM 15 A. THE ISSUE IS THAT THEIR QUALITY ASSESSMENT PROCESS DID NOT
03:26PM 16 IDENTIFY THAT THEY WERE NOT PERFORMING THE AAP AS THEY WERE
03:26PM 17 SUPPOSED TO.
03:26PM 18 THEY WERE --
03:26PM 19 Q. AND THAT WAS A SIX MONTH REQUIREMENT; CORRECT?
03:26PM 20 A. YEAH, THAT WAS THEIR REQUIREMENT.
03:26PM 21 Q. OKAY. AND --
03:26PM 22 MR. LEACH: YOUR HONOR, MAY THE WITNESS BE PERMITTED
03:26PM 23 TO FINISH HER ANSWER?
03:26PM 24 THE COURT: YEAH, SHE WAS IN THE MIDDLE OF HER
03:26PM 25 ANSWER.

03:26PM 1 MR. CAZARES: I WILL NOT STEP OVER HER STATEMENT.

03:26PM 2 THE COURT: DID YOU FINISH YOUR ANSWER?

03:26PM 3 THE WITNESS: NOT QUITE.

03:26PM 4 THE COURT: WHY DON'T YOU FINISH YOUR ANSWER.

03:26PM 5 THE WITNESS: AND THE REST OF THE ISSUE WAS THAT

03:26PM 6 THEY HAD NOT PERFORMED IT ON -- PERFORMED THE AAP ON TESTS THAT

03:26PM 7 WERE INITIALLY STARTED IN NOVEMBER OF 2013.

03:26PM 8 BY MR. CAZARES:

03:26PM 9 Q. BECAUSE SUB F DESCRIBES "FOUR TESTS (VITAMIN D, THYROID

03:27PM 10 STIMULATING HORMONE, FREE T4, AND TOTAL PROSTATE SPECIFIC

03:27PM 11 ANTIGEN) WERE INITIALLY IMPLEMENTED IN NOVEMBER OF 2013."

03:27PM 12 DO YOU SEE THAT?

03:27PM 13 A. I DO.

03:27PM 14 Q. SO YOU RECEIVED SOME RECORDS SHOWING THAT THEY STARTED

03:27PM 15 THAT TESTING IN NOVEMBER OF 2013; RIGHT?

03:27PM 16 A. THAT WAS THE LETTER FROM MR. BALWANI.

03:27PM 17 Q. AND THEN THE INITIAL AAP PROCEDURE OR CHALLENGE DIDN'T

03:27PM 18 TAKE PLACE UNTIL AUGUST 18TH OF 2014 ACCORDING TO THE RECORDS;

03:27PM 19 CORRECT?

03:27PM 20 A. THAT'S -- YES.

03:27PM 21 Q. AND AUGUST 18TH, 2014 IS MORE THAN SIX MONTHS BEYOND

03:27PM 22 NOVEMBER 2013?

03:27PM 23 A. THAT'S CORRECT.

03:27PM 24 Q. OKAY. SO IF THEY HAD DONE IT A COUPLE MONTHS EARLIER,

03:27PM 25 THEY AT LEAST MAY HAVE SATISFIED THAT SIX MONTH REQUIREMENT;

03:27PM 1 CORRECT?

03:27PM 2 A. YES. BUT THEY DID NOT.

03:27PM 3 Q. OKAY. AND YOU IDENTIFY NO EVIDENCE IN THE SURVEY REPORT

03:28PM 4 THAT THIS FAILURE TO MEET THE SIX MONTH REQUIREMENT FOR THE AAP

03:28PM 5 ACTUALLY AFFECTED PATIENT RESULTS; CORRECT?

03:28PM 6 A. THAT'S NOT THE PURPOSE OF THIS. SO I GUESS THE ANSWER

03:28PM 7 WOULD BE NO.

03:28PM 8 Q. THANK YOU.

03:28PM 9 IN THE BINDER OF DOCUMENTS THAT YOU HAVE, THERE SHOULD BE

03:28PM 10 A DOCUMENT IDENTIFIED AS 26 -- OH, NO, IT'S NOT. I HAVE IT.

03:28PM 11 YOUR HONOR, MAY I APPROACH?

03:28PM 12 THE COURT: YES.

03:28PM 13 MR. CAZARES: (HANDING.)

03:29PM 14 Q. MS. BENNETT, I'M HANDING YOU A DOCUMENT MARKED 20633.

03:29PM 15 ARE YOU LOOKING AT EXHIBIT 20633?

03:29PM 16 A. YES.

03:29PM 17 Q. OKAY. AND YOU SEE AT THE TOP IT'S TITLED STANDARD

03:29PM 18 OPERATING PROCEDURE, ALTHOUGH THE TYPING IS A LITTLE UNCLEAR?

03:29PM 19 A. YES.

03:29PM 20 Q. AND THE DOCUMENT APPEARS TO BE EFFECTIVE JANUARY 1, 2014?

03:29PM 21 A. YES.

03:29PM 22 Q. AND IT'S TITLED PROFICIENCY TESTING FOR THERANOS

03:29PM 23 LAB-DEVELOPED TESTS IMMUNOASSAYS.

03:29PM 24 DO YOU SEE THAT?

03:29PM 25 A. I DO.

03:29PM 1 Q. AND IF YOU LOOK AT THE DOCUMENT --
03:29PM 2 WELL, MR. ALLEN, IF WE CAN PUT UP ON THE SCREEN ON
03:30PM 3 PAGE 72 --
03:30PM 4 THE COURT: IS THIS IN EVIDENCE?
03:30PM 5 MR. CAZARES: OH, NOT THIS DOCUMENT. A PRIOR
03:30PM 6 EXHIBIT. I WAS GOING TO ASK HIM TO PUT UP A PRIOR EXHIBIT,
03:30PM 7 YOUR HONOR. I'M SORRY.
03:30PM 8 EXHIBIT 4621, SUB A ON THE LEFT-HAND SIDE.
03:30PM 9 Q. AND DO YOU SEE THE DOCUMENT NUMBER ON EXHIBIT 20633?
03:30PM 10 A. I DO.
03:30PM 11 Q. AND DOES THAT APPEAR TO BE THE SAME DOCUMENT NUMBER THAT
03:30PM 12 YOU'VE IDENTIFIED IN THE REPORT, CORRECT, CL SOP-00020,
03:30PM 13 REVISION B?
03:30PM 14 A. IT APPEARS TO BE THE SAME DOCUMENT.
03:30PM 15 MR. CAZARES: OKAY. YOUR HONOR, MOVE TO ADMIT
03:30PM 16 26333.
03:30PM 17 THE COURT: IT'S 20633.
03:30PM 18 MR. CAZARES: YES, YOUR HONOR.
03:30PM 19 MR. LEACH: NO OBJECTION.
03:30PM 20 THE COURT: IT'S ADMITTED, AND IT MAY BE PUBLISHED.
03:30PM 21 (DEFENDANT'S EXHIBIT 20633 WAS RECEIVED IN EVIDENCE.)
03:30PM 22 BY MR. CAZARES:
03:30PM 23 Q. AND JUST TO LOOK AT THE FIRST PAGE OF EXHIBIT 20633,
03:30PM 24 AGAIN, IT APPEARS TO BE THE PROFICIENCY TESTING FOR THERANOS
03:30PM 25 LAB-DEVELOPED TESTS (IMMUNOASSAYS).

03:31PM 1 DO YOU SEE THAT?

03:31PM 2 A. I DO.

03:31PM 3 Q. AND THIS IS THE DOCUMENT YOU REVIEWED IN WRITING UP THIS

03:31PM 4 NONCOMPLIANCE IN AAP FOR THE EDISON; CORRECT?

03:31PM 5 A. IT APPEARS SO, YES.

03:31PM 6 Q. AND IF YOU TURN TO THE THIRD PAGE OF THE DOCUMENT UNDER

03:31PM 7 PURPOSE, IF WE CAN BLOW THAT UP.

03:31PM 8 THE SOP READS, "THE PURPOSE OF THIS PROPOSAL IS TO DEVISE

03:31PM 9 AN ALTERNATIVE ASSESSMENT PROTOCOL FOR LABORATORY-DEVELOPED

03:31PM 10 TESTS ON THE EDISON 3.5 IMMUNOASSAY INSTRUMENT."

03:31PM 11 DO YOU SEE THAT?

03:31PM 12 A. I DO.

03:31PM 13 Q. AND THEN 1.2 READS, "GUIDELINE: FOR NON-CMS-REGULATED

03:31PM 14 TESTS OR THOSE WHICH LACK FDA CLEARANCE, COMMERCIAL OR EXTERNAL

03:31PM 15 PT PROGRAMS MAY NOT BE AVAILABLE FOR CERTAIN ANALYTES."

03:31PM 16 DO YOU SEE THAT?

03:31PM 17 A. YES.

03:31PM 18 Q. AND THEN IT CONTINUES.

03:32PM 19 "IN SUCH INSTANCES, AN AAP WILL BE USED TO ENSURE ACCURACY

03:32PM 20 OF THE ONGOING TEST SYSTEM PERFORMANCE."

03:32PM 21 DO YOU SEE THAT?

03:32PM 22 A. I DO.

03:32PM 23 Q. AND IT IS WITHIN THE PURVIEW OF THE LAB DIRECTOR'S

03:32PM 24 AUTHORITY TO IMPLEMENT AN AAP PROGRAM AS REFLECTED IN 20633;

03:32PM 25 CORRECT?

03:32PM 1 A. IT IS.

03:32PM 2 Q. AND THEN UNDER .2, SCOPE, THE AAP READS, "THE ALTERNATIVE

03:32PM 3 ASSESSMENT PROTOCOL APPLIES TO ALL LABORATORY DEVELOPED TESTS

03:32PM 4 ON THE EDISON 3.5 INSTRUMENT, AND WILL BE CONDUCTED EVERY

03:32PM 5 6 MONTHS."

03:32PM 6 DO YOU SEE THAT?

03:32PM 7 A. I DO.

03:32PM 8 Q. AND THAT WAS ONE OF THE ISSUES THAT YOU FOUND IN THAT THE

03:32PM 9 TESTING STARTED IN NOVEMBER OF 2014, BUT THE AAP PROCEDURES

03:32PM 10 DIDN'T START UNTIL AUGUST OF 2014; CORRECT?

03:32PM 11 A. THAT'S CORRECT.

03:32PM 12 THE OTHER, THE OTHER ISSUE WITH THIS IS THAT --

03:32PM 13 Q. I WAS JUST ASKING IF IT WAS CORRECT.

03:32PM 14 THANK YOU.

03:32PM 15 A. SURE.

03:32PM 16 Q. AND THEN IF WE TURN TO PAGE 6 OF THE SOP, YOU SEE THERE'S

03:33PM 17 A REVISION HISTORY?

03:33PM 18 A. YES.

03:33PM 19 Q. AND IT APPEARS THAT THE SOP DATES BACK TO NOVEMBER OF

03:33PM 20 2013.

03:33PM 21 DO YOU SEE THAT?

03:33PM 22 A. I DO.

03:33PM 23 Q. WE CAN SET THAT ASIDE.

03:33PM 24 AND, MR. ALLEN, IF WE CAN LEAVE UP ON THE SCREEN PAGE --

03:33PM 25 ON DOCUMENT 4621, PAGE 72, SUB B -- NO, SUB C ON THAT PAGE.

03:33PM 1 AND IN THE BINDER YOU HAVE, MS. BENNETT, IF YOU COULD TAKE
03:33PM 2 A LOOK AT EXHIBIT 20619, 20619.
03:34PM 3 ARE YOU LOOKING AT 20619?
03:34PM 4 A. I AM.
03:34PM 5 Q. OKAY. SO THE FIRST PAGE OF 20619 APPEARS TO BE AN EMAIL
03:34PM 6 FROM YOURSELF TO MR. YAMAMOTO.
03:34PM 7 DO YOU SEE THAT?
03:34PM 8 A. I DO.
03:34PM 9 Q. AND IT APPEARS TO BE DATED OCTOBER 31, 2016.
03:34PM 10 DO YOU SEE THAT?
03:34PM 11 A. I DO.
03:34PM 12 Q. AND THEN THE SUBJECT APPEARS TO SAY EVIDENCE HASH TAG 7.
03:34PM 13 DO YOU SEE THAT?
03:34PM 14 A. I DO.
03:34PM 15 Q. AND THEN THERE ARE SOME ATTACHMENTS REFLECTED IN THE
03:34PM 16 EMAIL.
03:34PM 17 DO YOU SEE THAT?
03:34PM 18 A. I DO.
03:34PM 19 Q. OKAY. AND THEN IF YOU FLIP, THERE ARE SOME ATTACHMENTS,
03:35PM 20 INCLUDING DOCUMENTS THAT APPEAR TO BE TITLED ALTERNATIVE
03:35PM 21 ASSESSMENT PROGRAM, THERANOS AT THE TOP?
03:35PM 22 A. YES.
03:35PM 23 Q. OKAY. AND BEHIND THAT THERE ARE SOME OTHER DOCUMENTATION.
03:35PM 24 DO YOU SEE THAT?
03:35PM 25 A. I DO.

03:35PM 1 Q. OKAY. AND AGAIN, IN YOUR WORK AT CMS, WHILE YOU WERE
03:35PM 2 DOING THE SURVEY WITH MR. YAMAMOTO AND THE WORK INVOLVED IN
03:35PM 3 SURVEYING THERANOS'S LABORATORY, YOU USED EMAIL TO COMMUNICATE
03:35PM 4 WITH MR. YAMAMOTO?
03:35PM 5 A. WE DID.
03:35PM 6 Q. OKAY. AND INCLUDING EXCHANGING DOCUMENTS?
03:35PM 7 A. YES.
03:35PM 8 Q. OKAY.
03:35PM 9 MOVE TO ADMIT 20619, YOUR HONOR.
03:35PM 10 MR. LEACH: NO OBJECTION.
03:35PM 11 THE COURT: IT'S ADMITTED. IT MAY BE PUBLISHED.
03:35PM 12 (DEFENDANT'S EXHIBIT 20619 WAS RECEIVED IN EVIDENCE.)
03:35PM 13 BY MR. CAZARES:
03:35PM 14 Q. OKAY. SO THE FIRST PAGE, AGAIN, THIS IS AN EXCHANGE
03:35PM 15 BETWEEN YOURSELF AND MR. YAMAMOTO.
03:35PM 16 DO YOU SEE THAT?
03:35PM 17 A. I DO.
03:35PM 18 Q. AND THIS IS OCTOBER 31, 2016?
03:35PM 19 A. YES.
03:35PM 20 Q. AND THEN IF WE FLIP TO THE FIRST PAGE -- THE SECOND PAGE,
03:36PM 21 SORRY.
03:36PM 22 THERE'S A DOCUMENT AT THE TOP THAT SAYS, "THERANOS
03:36PM 23 ALTERNATIVE ASSESSMENT PROGRAM.
03:36PM 24 DO YOU SEE THAT?
03:36PM 25 A. I DO.

03:36PM 1 Q. AND THEN THERE'S A DOCUMENT IDENTIFICATION NUMBER THERE
03:36PM 2 THAT SAYS CL FRM-00022-F3?
03:36PM 3 A. YES.
03:36PM 4 Q. OKAY. AND DOES THAT APPEAR TO BE THE SAME DOCUMENT
03:36PM 5 REFLECTED IN THE SURVEY REPORT PASSAGE UP ON THE SCREEN AS WELL
03:36PM 6 THAT WE WERE LOOKING AT RELATING TO THERANOS AAP?
03:36PM 7 A. IT DOES.
03:36PM 8 Q. SO THIS APPEARS TO BE EVIDENCE THAT YOU REVIEWED IN
03:36PM 9 REACHING THOSE FINDINGS FOR THE AAP NONCOMPLIANCE DESCRIBED IN
03:36PM 10 THE SURVEY REPORT?
03:36PM 11 A. IT DOES.
03:36PM 12 Q. OKAY. AND WE CAN SET ASIDE FOR NOW ON THE SCREEN THE
03:36PM 13 SURVEY REPORT, MR. ALLEN.
03:36PM 14 STICKING WITH PAGE 2 OF THE AAP DATA, AND YOU'LL SEE IF WE
03:37PM 15 FOCUS ON THE FIRST SECTION, THE FIRST COLUMN, OR I'LL SAY THE
03:37PM 16 FIRST ROWS, IT DESCRIBES AAP PROGRAM TESTING DATE AUGUST 18,
03:37PM 17 2014.
03:37PM 18 DO YOU SEE THAT?
03:37PM 19 A. I DO.
03:37PM 20 Q. AND THAT'S THE FIRST CHALLENGED EVENT DESCRIBED IN YOUR
03:37PM 21 SURVEY REPORT RELATING TO THE AAP; CORRECT?
03:37PM 22 A. IT IS.
03:37PM 23 Q. AND THEN YOU'LL SEE IN THIS FIRST SECTION THERE ARE ONE,
03:37PM 24 TWO, THREE, FOUR, FIVE SAMPLES TESTED REFLECTED IN THE
03:37PM 25 DOCUMENT?

03:37PM 1 A. YES.

03:37PM 2 Q. AND THIS APPEARS TO BE FOR THYROXINE.

03:37PM 3 DO YOU SEE THAT?

03:37PM 4 A. YES.

03:37PM 5 Q. AND AGAIN, THIS IS RUN ON THE EDISON; CORRECT?

03:37PM 6 AS WE DESCRIBED IN YOUR SURVEY REPORT, THE AAP

03:37PM 7 NONCOMPLIANCE RELATED TO AAP ON THE EDISON; CORRECT?

03:37PM 8 A. YES, THERE'S - THE EDISON DEVICE APPEARS TO BE IN HERE.

03:38PM 9 Q. OKAY. AND THEN ON THE -- FIVE ROWS DOWN ON THE FIRST

03:38PM 10 COLUMN, TAE.

03:38PM 11 DO YOU SEE THAT?

03:38PM 12 A. YES.

03:38PM 13 Q. AND THAT'S AN ACRONYM FOR TOTAL ALLOWABLE ERROR.

03:38PM 14 DO YOU SEE THAT?

03:38PM 15 A. YES.

03:38PM 16 Q. OKAY. AND THEN FOR THIS AAP CHALLENGE, THE TOTAL

03:38PM 17 ALLOWABLE ERROR'S PLUS/MINUS 20 PERCENT.

03:38PM 18 DO YOU SEE THAT?

03:38PM 19 A. I DO.

03:38PM 20 Q. AND THEN THE LAST ROW FOR THIS SECTION READS, PREDICATE

03:38PM 21 VALUE, ANALYTE PREDICATE VALUE, PERCENT.

03:38PM 22 DO YOU SEE THAT?

03:38PM 23 A. I DO.

03:38PM 24 Q. AND THEN THE DATA REFLECTS A DIFFERENCE IN THE RESULT

03:38PM 25 BETWEEN THE PREDICATE DEVICE AND THE THERANOS DEVICE; CORRECT?

03:38PM 1 A. YES.

03:38PM 2 Q. AT LEAST THAT'S HOW YOU READ IT; CORRECT?

03:38PM 3 A. THAT'S HOW I READ IT.

03:38PM 4 Q. AND THEN IF YOU GO ACROSS THAT LAST ROW WITH THE PREDICATE

03:38PM 5 VALUE, THE PERCENTAGES APPEAR TO BE 16 PERCENT -- MINUS

03:38PM 6 16 PERCENT, THE FIRST ONE.

03:38PM 7 DO YOU SEE THAT?

03:38PM 8 A. I DO.

03:38PM 9 Q. AND THEN MINUS 2 FOR SAMPLE 2?

03:38PM 10 A. YES.

03:39PM 11 Q. AND THEN 8 PERCENT FOR SAMPLE 3?

03:39PM 12 A. YES.

03:39PM 13 Q. AND THEN FOR SAMPLE 4, MINUS 16 PERCENT?

03:39PM 14 A. YES.

03:39PM 15 Q. AND THEN FOR SAMPLE 5, 0 PERCENT; CORRECT?

03:39PM 16 A. YES.

03:39PM 17 Q. AND THEN THE DOCUMENT DESCRIBES THE SCORE FOR THAT

03:39PM 18 CHALLENGE TO BE 100 PERCENT.

03:39PM 19 DO YOU SEE THAT?

03:39PM 20 A. I DO.

03:39PM 21 Q. OKAY. AND THEN CONTINUING WITH THE NEXT SET OF DATA

03:39PM 22 BELOW, THAT DESCRIBES 8/17/2014.

03:39PM 23 DO YOU SEE THAT?

03:39PM 24 A. YES.

03:39PM 25 Q. AND THIS IS FOR PSA, A DIFFERENT ASSAY; CORRECT?

03:39PM 1 A. YES.

03:39PM 2 Q. ALSO RUN ON THE EDISON; CORRECT?

03:39PM 3 A. YES.

03:39PM 4 Q. AND THEN AGAIN, IN THIS CHALLENGE THERE'S A PSA TOTAL

03:39PM 5 PREDICATE, AND THEN PSA TOTAL THERANOS.

03:39PM 6 DO YOU SEE THAT?

03:39PM 7 A. I DO.

03:39PM 8 Q. AND, AGAIN, THIS IS COMPARING THE PREDICATE RESULT WITH

03:39PM 9 THE EDISON RESULT; CORRECT?

03:39PM 10 A. YES.

03:39PM 11 Q. AND THEN, AGAIN, THE TOTAL ALLOWABLE ERROR HERE IS AGAIN

03:40PM 12 20 PERCENT.

03:40PM 13 DO YOU SEE THAT?

03:40PM 14 A. YES.

03:40PM 15 Q. AND THEN THE PREDICATE VALUE VERSUS THE -- THE PREDICATE

03:40PM 16 VALUE VERSUS THE ANALYTE PREDICATE YOU SEE IN THE LAST ROW,

03:40PM 17 AGAIN, MINUS 16 PERCENT FOR THE FIRST SAMPLE.

03:40PM 18 DO YOU SEE THAT?

03:40PM 19 A. I DO.

03:40PM 20 Q. AND THEN 0 PERCENT FOR THE NEXT SAMPLE?

03:40PM 21 DO YOU SEE THAT?

03:40PM 22 A. I DO.

03:40PM 23 Q. AND THEN 8 PERCENT FOR SAMPLE 3?

03:40PM 24 DO YOU SEE THAT?

03:40PM 25 A. I DO.

03:40PM 1 Q. AND THEN MINUS 9 PERCENT FOR SAMPLE 4.

03:40PM 2 DO YOU SEE THAT?

03:40PM 3 A. I DO.

03:40PM 4 Q. AND THEN MINUS 18 PERCENT FOR SAMPLE 5.

03:40PM 5 DO YOU SEE THAT?

03:40PM 6 A. YES.

03:40PM 7 Q. SO AT LEAST FOR THIS AAP CHALLENGE, THE PERFORMANCE OF THE

03:40PM 8 EDISON AGAINST THE PREDICATE IS FALLING WITHIN THE TOTAL

03:40PM 9 ALLOWABLE ERROR; CORRECT?

03:40PM 10 A. YES.

03:40PM 11 Q. OKAY. AND, AGAIN, THE SCORE FOR THIS CHALLENGE IS

03:40PM 12 100 PERCENT.

03:40PM 13 DO YOU SEE THAT?

03:40PM 14 A. I DO.

03:40PM 15 Q. AND THEN IF WE GO TO THE NEXT ASSAY, THIS IS THYROID

03:40PM 16 STIMULATING HORMONE, TSH.

03:41PM 17 DO YOU SEE THAT?

03:41PM 18 A. I DO.

03:41PM 19 Q. AND, AGAIN, COMPARING THE PREDICATE RESULTS VERSUS THE

03:41PM 20 THERANOS RESULTS.

03:41PM 21 DO YOU SEE THAT?

03:41PM 22 A. I DO.

03:41PM 23 Q. AND, AGAIN, THE LAST ROW, THE PERCENTAGE BEING 4 PERCENT,

03:41PM 24 9 PERCENT, DO YOU SEE THOSE, FOR SAMPLES 1 AND 2?

03:41PM 25 A. I DO.

03:41PM 1 Q. AND THEN FOR SAMPLES 3 AND 4, 17 AND 12 PERCENT.

03:41PM 2 DO YOU SEE THAT?

03:41PM 3 A. I DO.

03:41PM 4 Q. AND THEN FOR SAMPLE 5, 10 PERCENT.

03:41PM 5 DO YOU SEE THAT?

03:41PM 6 A. I DO. MINUS 10 PERCENT.

03:41PM 7 Q. MINUS 10 PERCENT. THANK YOU.

03:41PM 8 AGAIN, ALL WITHIN THE TOTAL ALLOWABLE ERROR WITHIN THE

03:41PM 9 PREDICATE VERSUS THE EDISON DEVICE; CORRECT?

03:41PM 10 A. YES.

03:41PM 11 Q. AND, AGAIN, THE SCORE BEING 100 PERCENT.

03:41PM 12 DO YOU SEE THAT?

03:41PM 13 A. I DO.

03:41PM 14 Q. AND THEN IF WE CONTINUE WITH VITAMIN D, AGAIN, COMPARING

03:41PM 15 PREDICATE VERSUS THERANOS.

03:41PM 16 DO YOU SEE THAT?

03:41PM 17 A. I DO.

03:41PM 18 Q. SAME TOTAL ALLOWABLE ERROR.

03:41PM 19 DO YOU SEE THAT?

03:41PM 20 A. I DO.

03:41PM 21 Q. AND THEN EACH OF THE RESULTS FALLING WITHIN THE ALLOWABLE

03:41PM 22 ERROR; CORRECT?

03:41PM 23 A. I DO.

03:41PM 24 Q. AND SOME PRETTY CLOSE.

03:41PM 25 FOR EXAMPLE, SAMPLE 4 ON THE VITAMIN D CHALLENGE WITHIN

03:42PM 1 PERCENT OF EACH OTHER; CORRECT?

03:42PM 2 A. I SEE THAT.

03:42PM 3 Q. OKAY. NOW, EACH OF THE SCORES WERE 100 PERCENT, BUT THE

03:42PM 4 SIGNATURES FOR REVIEW BY LAB MANAGEMENT APPEAR TO BE IN 2015.

03:42PM 5 DO YOU SEE THAT?

03:42PM 6 A. I DO.

03:42PM 7 Q. OKAY. NOW, IF YOU TURN TO PAGE 3 OF THE SAME EXHIBIT,

03:42PM 8 THIS APPEARS TO BE THE CHALLENGE FOR OCTOBER 21, 2014,

03:42PM 9 REFLECTED IN YOUR SURVEY REPORT.

03:42PM 10 DO YOU SEE THAT?

03:42PM 11 A. YES.

03:42PM 12 Q. OKAY. AND THE ASSAYS AT ISSUE HERE APPEAR TO BE

03:42PM 13 ESTRADIOL.

03:42PM 14 DO YOU SEE THAT?

03:42PM 15 A. I DO.

03:42PM 16 Q. AND THEN THYROXINE.

03:42PM 17 DO YOU SEE THAT?

03:42PM 18 A. I DO.

03:42PM 19 Q. AND THEN HUMAN CHORIONIC GONADOTROPIN, HCG?

03:42PM 20 A. YES.

03:42PM 21 Q. AND THEN THE LAST BEING PROLACTIN.

03:42PM 22 DO YOU SEE THAT?

03:42PM 23 A. I DO.

03:42PM 24 Q. AND THEN AGAIN, THIS AAP PROCEDURE IN OCTOBER OF 2014 IS

03:43PM 25 AGAIN COMPARING THE EDISON DEVICE VERSUS THE PREDICATE.

03:43PM 1 DO YOU SEE THAT?

03:43PM 2 A. I DO.

03:43PM 3 Q. AND THEN FOR EACH OF THE CHALLENGES REFLECTED FOR PAGE 3

03:43PM 4 FOR OCTOBER OF 2013 FOR ESTRADIOL, AGAIN, TOTAL ALLOWABLE ERROR

03:43PM 5 BEING 20 PERCENT.

03:43PM 6 DO YOU SEE THAT?

03:43PM 7 A. I DO.

03:43PM 8 Q. AND THEN FOR ESTRADIOL THERE ARE SOME NOT APPLICABLE

03:43PM 9 RESULTS REFLECTED IN THE SHEET.

03:43PM 10 DO YOU SEE THAT?

03:43PM 11 A. I DO.

03:43PM 12 Q. OKAY. AND THEN FOR THYROXINE, DO YOU SEE EACH OF THE

03:43PM 13 RESULTS BEING WITHIN THE 20 PERCENT TOTAL ALLOWABLE ERROR?

03:43PM 14 A. I DO.

03:43PM 15 Q. AND DO YOU SEE PROLACTIN ALL BEING WITHIN THE TOTAL

03:43PM 16 ALLOWABLE ERROR?

03:43PM 17 A. I DO.

03:43PM 18 Q. OKAY. AND THAT OCTOBER CHALLENGE SHEET APPEARS TO

03:44PM 19 CONTINUE ON PAGE 4 REFLECTING SOME CHALLENGES IN NOVEMBER AND

03:44PM 20 OCTOBER OF 2014.

03:44PM 21 DO YOU SEE THAT?

03:44PM 22 A. I DO.

03:44PM 23 Q. OKAY. AGAIN FOR T3.

03:44PM 24 DO YOU SEE THAT FOR TRIIODOTHYRONINE?

03:44PM 25 DO YOU SEE THAT?

03:44PM	1	A. YES, THAT IS T3.
03:44PM	2	Q. I THOUGHT SO. AND THYROXINE?
03:44PM	3	A. YES.
03:44PM	4	Q. VITAMIN B12?
03:44PM	5	A. YES.
03:44PM	6	Q. AND VITAMIN D?
03:44PM	7	A. YES.
03:44PM	8	Q. AND AGAIN, EACH OF THE CHALLENGED SCORES APPEARS TO BE
03:44PM	9	WITHIN THE TOTAL ALLOWABLE ERROR AND 100 PERCENT SCORES;
03:44PM	10	CORRECT?
03:44PM	11	A. YES.
03:44PM	12	Q. BUT, AGAIN, WE HAD THIS ISSUE OF LAB MANAGEMENT FAILING TO
03:44PM	13	REVIEW IN A TIMELY MANNER; CORRECT?
03:44PM	14	A. RUNNING IN THE INTERVAL THAT THEIR PROCEDURE SAID AND
03:44PM	15	REVIEWING IT IN A TIMELY MANNER, YES.
03:44PM	16	Q. AND THEN IF WE CONTINUE WITH THE LAST PAGE THAT I'LL ASK
03:44PM	17	YOU ABOUT, ON PAGE 5 THERE ARE SOME CHALLENGES IN MARCH OF
03:45PM	18	2015.
03:45PM	19	DO YOU SEE THAT?
03:45PM	20	A. YES.
03:45PM	21	Q. AND THEN THIS IS RELATING TO SHGB; CORRECT?
03:45PM	22	A. YES.
03:45PM	23	Q. AND THE OTHER IS PSA TOTAL?
03:45PM	24	A. YES, SHBG.
03:45PM	25	Q. SHBG. THANK YOU.

03:45PM 1 AND THE TOTAL ALLOWABLE ERROR IS 20 PERCENT FOR EACH OF
03:45PM 2 THE CHALLENGES?

03:45PM 3 A. I DO.

03:45PM 4 Q. AND EACH OF THE COMPARISONS OF THE EDISON VERSUS THE
03:45PM 5 PREDICATE ARE ALL WITHIN THE TOTAL ALLOWABLE ERROR; CORRECT?

03:45PM 6 A. THEY ARE.

03:45PM 7 Q. YOU CAN SET THAT ASIDE.

03:45PM 8 IF WE CAN GO BACK TO EXHIBIT 4621, THE SURVEY REPORT.

03:46PM 9 IF WE GO TO PAGE 67.

03:46PM 10 ACTUALLY START AT -- YES, 67. SORRY. ABOUT MID-PAGE,

03:46PM 11 ITEM 7, THE REPORT READS, "BASED ON LABORATORY PERSONNEL
03:46PM 12 INTERVIEWS AND LABORATORY'S ALTERNATIVE ASSESSMENT PROGRAM
03:46PM 13 RECORD REVIEW ON NOVEMBER 20, 2015, THE LABORATORY FAILED TO
03:46PM 14 HAVE AN ANALYTIC SYSTEMS QUALITY ASSESSMENT MECHANISM THAT
03:46PM 15 INCLUDED THE TIMELY REVIEW OF THE EFFECTIVENESS OF ACTIONS
03:47PM 16 TAKEN."

03:47PM 17 AND THEN "FINDINGS INCLUDED TO COMPLY WITH THE CLIA
03:47PM 18 REQUIREMENT AT 42 C.F.R. 493.1281(A), THE LABORATORY MAINTAINED
03:47PM 19 A PROTOCOL TITLED PROFICIENCY TESTING FOR THERANOS
03:47PM 20 LAB-DEVELOPED TESTS, THAT INCLUDED A LABORATORY PROCESS CALLED
03:47PM 21 AAP IN WHICH TESTS PERFORMED USING THE ADVIA 1800 WOULD BE
03:47PM 22 EVALUATED AND DEFINED IN RELATIONSHIP TO THE ADVIA XPT."

03:47PM 23 DO YOU SEE THAT?

03:47PM 24 A. I DO.

03:47PM 25 Q. OKAY. SO THIS IS ANOTHER ISSUE RELATING TO THERANOS'S

03:47PM 1 EXECUTION OF ITS AAP PROGRAM; CORRECT?

03:47PM 2 A. THIS IS MR. YAMAMOTO'S CITATION.

03:47PM 3 Q. OKAY. SO YOU'RE NOT FAMILIAR WITH THIS ISSUE?

03:47PM 4 A. I DID NOT CITE THIS, SO HE WOULD HAVE PUT ALL OF THE

03:47PM 5 FINDINGS IN HERE.

03:47PM 6 Q. NOW, THE ADVIA 1800, THAT'S A COMMERCIAL DEVICE?

03:47PM 7 A. IT IS.

03:47PM 8 Q. AND THE ADVIA XPT IS ALSO A COMMERCIAL DEVICE?

03:48PM 9 A. IT IS.

03:48PM 10 Q. BUT IN THE COURSE OF YOUR SURVEY YOU LEARNED THAT -- IN

03:48PM 11 THE COURSE OF YOUR SURVEY OF THERANOS, YOU LEARNED THAT

03:48PM 12 THERANOS HAD MODIFIED ADVIA 1800 SYSTEMS TO RUN FINGERSTICK

03:48PM 13 SAMPLES; CORRECT?

03:48PM 14 A. YES.

03:48PM 15 Q. OKAY. AND SO IT APPEARS THAT THIS CHALLENGE, THIS

03:48PM 16 NONCOMPLIANCE BEING WRITTEN UP IN THE REPORT DESCRIBES AN AAP

03:48PM 17 PROCESS COMPARING THE 1800 TO THE XPT; CORRECT?

03:48PM 18 A. I DID NOT SURVEY THE FINGERSTICK PART OF THE LABORATORY,

03:48PM 19 SO I CANNOT SPEAK TO THIS CITATION.

03:48PM 20 Q. AND SO JUST TO BE CLEAR THEN, THE PORTIONS OF THE SURVEY

03:48PM 21 THAT YOU YOURSELF HANDLED INCLUDED REVIEW OF EDISON QC;

03:48PM 22 CORRECT?

03:48PM 23 A. I REVIEWED EDISON QC.

03:48PM 24 Q. EDISON VALIDATION REPORTS; CORRECT?

03:48PM 25 A. YES.

03:48PM 1 Q. COAGULATION ISSUE?

03:49PM 2 A. YES.

03:49PM 3 Q. PERSONNEL TRAINING RECORDS?

03:49PM 4 A. YES.

03:49PM 5 Q. AND THEN BEYOND THAT YOU ALSO HAD RESPONSIBILITY FOR I

03:49PM 6 THINK I'LL CALL IT THE JURASSIC PARK, THE TRADITIONAL VENOUS

03:49PM 7 BLOOD TESTING LAB?

03:49PM 8 A. THE ONLY PART OF THAT THAT I REVIEWED WAS THE COAGULATION,

03:49PM 9 THE PT INR.

03:49PM 10 Q. OKAY. AND YOU SAID YOU DID NOT EXAMINE YOURSELF ANY OF

03:49PM 11 THE MODIFIED PREDICATE TESTING AT THERANOS?

03:49PM 12 A. IN THE FINGERSTICK LABORATORY, I DID NOT.

03:49PM 13 Q. OKAY. MR. ALLEN, IF WE COULD TAKE A LOOK AT PAGE 68.

03:50PM 14 AT THE BOTTOM OF PAGE 68 THERE'S A DESCRIPTION OF, AT

03:50PM 15 SUB 8, "BASED ON THE REVIEW OF THE QUALITY CONTROL PROCEDURE,

03:50PM 16 LEVEY-JENNING REPORTS FOR THE ADVIA 1800 AND THE ADVIA XPT

03:50PM 17 PROFICIENCY TESTING RESULTS AND QUALITY ASSESSMENT

03:50PM 18 DOCUMENTATION THE LABORATORY FAILED TO TAKE CORRECTIVE ACTIONS

03:50PM 19 WHEN CHEMISTRY QC IN THE VENIPUNCTURE LABORATORY WAS OBSERVED

03:50PM 20 TEN CONSECUTIVE TIMES ON THE SAME SIDE OF THE MEAN."

03:50PM 21 DO YOU SEE THAT?

03:50PM 22 A. I DO.

03:50PM 23 Q. AND THEN AFTER THAT THE REPORT READS, "CL QOP-00013

03:50PM 24 REVISION D QUALITY CONTROL IN CHEMISTRY STATED IS SEEMED TO

03:51PM 25 HAVE PASSED WHEN... WESTGARD RULES HAVE NOT BEEN VIOLATED."

03:51PM 1 DO YOU SEE THAT?

03:51PM 2 A. I DO.

03:51PM 3 Q. AND THEN BEYOND THAT, "CL QOP-00013 REVISION D ALSO STATED

03:51PM 4 IN SECTION 6.3.2.5 THAT TEN CONSECUTIVE OBSERVATIONS ON THE

03:51PM 5 SAME SIDE OF THE MEAN SHOULD BE MONITORED."

03:51PM 6 CORRECT?

03:51PM 7 A. YES.

03:51PM 8 Q. NOW, THAT MONITORING IS SUPPOSED TO BE SUPERVISED BY THE

03:51PM 9 LABORATORY DIRECTOR; CORRECT?

03:51PM 10 A. HE HAS THE OVERALL RESPONSIBILITY, BUT HE CAN DELEGATE

03:51PM 11 THAT TO AN INDIVIDUAL.

03:51PM 12 Q. FAIR ENOUGH.

03:51PM 13 AND THIS PACKAGE OF THE SURVEY REPORT REGARDING QC

03:51PM 14 COMPLIANCE, WAS THIS YOUR WORK OR MR. YAMAMOTO'S?

03:51PM 15 A. IT'S MINE.

03:51PM 16 Q. OKAY. IF YOU GO DOWN ALBUMIN,

03:52PM 17 "REVIEW OF THE PT RESULTS FOR ALBUMIN FOR THE FIRST AND

03:52PM 18 SECOND EVENTS OF 2015 REVEALED THAT THE SUBMITTED RESULTS

03:52PM 19 SHOWED A NEGATIVE BIAS RANGING FROM NEGATIVE 3 TO NEGATIVE 4.9

03:52PM 20 AND NEGATIVE 1.8 TO NEGATIVE 3.5, RESPECTIVELY."

03:52PM 21 DO YOU SEE THAT?

03:52PM 22 A. I DO.

03:52PM 23 Q. AND THEN IT CONTINUES, "REVIEW OF LEVEY-JENNING REPORTS

03:52PM 24 FROM APRIL 2014 AND SEPTEMBER 2014, REVEALED THAT THE MULTI

03:52PM 25 QUAL LEVEL 1 AND MULTI QUAL LEVEL 2 HAD AT LEAST 10 CONSECUTIVE

03:52PM 1 RESULTS BELOW THE MEAN BUT WITHIN 2 STANDARD DEVIATIONS."

03:52PM 2 DO YOU SEE THAT?

03:52PM 3 A. YES.

03:52PM 4 Q. AND THEN THE NEXT PASSAGE READS, "REVIEW OF THE

03:53PM 5 LEVEY-JENNING REPORTS FOR JANUARY 2015 THROUGH APRIL 2015

03:53PM 6 REVEALED THAT MQ1 (LOT NUMBER) HAD 10 CONSECUTIVE RESULTS BELOW

03:53PM 7 THE MEAN AND MULTIQUAL LEVEL 3 HAD 10 CONSECUTIVE RESULTS BELOW

03:53PM 8 THE MEAN BUT WITHIN 2 STANDARD DEVIATIONS FOR ALL FOUR MONTHS."

03:53PM 9 DO YOU SEE THAT?

03:53PM 10 A. I DO.

03:53PM 11 Q. AND THIS RELATES TO TESTING ON PREDICATE DEVICES

03:53PM 12 COMMERCIAL DEVICES; CORRECT?

03:53PM 13 A. YES.

03:53PM 14 Q. AND SO WHAT YOU'RE DESCRIBING IS PT RESULTS WERE SHOWING A

03:53PM 15 BIAS WHEN RUN ON THE COMMERCIAL DEVICE; CORRECT?

03:53PM 16 A. BOTH THE PT AND THE QUALITY CONTROL.

03:53PM 17 Q. OKAY. AND THE NONCOMPLIANCE IDENTIFIED HERE IS THE LAB

03:54PM 18 DIRECTOR'S FAILURE TO MONITOR AND OVERSEE AND IDENTIFY THE BIAS

03:54PM 19 YOU IDENTIFIED IN THE PT AND QUALITY CONTROL RESULTS; CORRECT?

03:54PM 20 A. THE NONCOMPLIANCE HERE IS THAT THE QUALITY ASSESSMENT

03:54PM 21 PROGRAM DID NOT IDENTIFY THIS SO THAT NO CORRECTIVE ACTION WAS

03:54PM 22 EVER TAKEN.

03:54PM 23 Q. AND THE LAB DIRECTOR HAD RESPONSIBILITY FOR THAT; CORRECT?

03:54PM 24 A. THE LAB DIRECTOR OR WHOMEVER HE DELEGATED THAT

03:54PM 25 RESPONSIBILITY TO.

03:54PM 1 Q. AND IN YOUR FINDINGS RELATED TO THIS NONCOMPLIANCE, YOU
03:54PM 2 DIDN'T IDENTIFY ANY EVIDENCE THAT SUGGESTS PATIENTS WERE
03:54PM 3 ACTUALLY AFFECTED BY THE NONCOMPLIANCE YOU IDENTIFIED RIGHT
03:54PM 4 HERE; CORRECT?
03:54PM 5 A. AGAIN, THAT'S NOT REALLY WHAT THE CITATION IS ABOUT, BUT I
03:54PM 6 GUESS THE ANSWER IS NO.
03:55PM 7 Q. WITHIN THE -- I BELIEVE IT'S IN THE BINDER -- OH, NO.
03:55PM 8 ACTUALLY, MR. ALLEN, CAN WE GO TO PAGE 79 OF 4621.
03:55PM 9 MS. BENNETT, WE PUT UP ON THE SCREEN D-TAG 6085,
03:55PM 10 LABORATORY DIRECTOR RESPONSIBILITIES.
03:55PM 11 DO YOU SEE THAT?
03:55PM 12 A. I DO.
03:55PM 13 Q. AND AGAIN, THIS IS A STANDARD LEVEL NONCOMPLIANCE;
03:55PM 14 CORRECT?
03:55PM 15 A. YES.
03:55PM 16 Q. AND THE ISSUE HERE IS IDENTIFIED, "BASED ON REVIEW OF
03:55PM 17 VALIDATION DOCUMENTS ON THE THERANOS PROPRIETARY SYSTEM (TPS)
03:56PM 18 THE LABORATORY DIRECTOR FAILED TO ENSURE THAT THE QUALITY OF
03:56PM 19 RESULTS ON THE TPS; FAILED TO ENSURE THE ESTABLISHMENT OF
03:56PM 20 PERFORMANCE SPECIFICATIONS FOLLOWED THE LABORATORY'S PROCEDURES
03:56PM 21 TO ESTABLISH ACCURACY, PRECISION, REPORTABLE RANGE, AND/OR
03:56PM 22 REFERENCE RANGE. FINDINGS INCLUDE."
03:56PM 23 AND THERE'S A DESCRIPTION OF YOUR FINDINGS; CORRECT?
03:56PM 24 A. YES.
03:56PM 25 Q. AND THIS IS YOUR WORK; CORRECT?

03:56PM 1 A. YES.

03:56PM 2 Q. AND I THINK YOU DISCUSSED SOME OF THIS YESTERDAY WITH

03:56PM 3 MR. LEACH; CORRECT?

03:56PM 4 A. YES.

03:56PM 5 Q. AND THE REPORT DESCRIBES SUB A, "VALIDATION REPORTS FOR

03:56PM 6 VITD, T3, HCG, AND SHBG WERE REVIEWED."

03:56PM 7 DO YOU SEE THAT?

03:56PM 8 A. YES.

03:56PM 9 Q. AND YOU PERFORMED THAT REVIEW; CORRECT?

03:56PM 10 A. I DID.

03:56PM 11 Q. AND AS A PART OF THIS WORK, IN SUB B THERE'S A DESCRIPTION

03:56PM 12 OF THE MASTER VALIDATION PLAN FOR THE ROUTINE CHEMISTRY ASSAYS

03:56PM 13 ON THERANOS DEVICES.

03:56PM 14 DO YOU SEE THAT?

03:56PM 15 A. I DO.

03:56PM 16 Q. AND YOU REVIEWED THAT PLAN AS PART OF THE WORK; CORRECT?

03:57PM 17 A. YES.

03:57PM 18 Q. AND THEN AT SUB C, AND THERE'S A DESCRIPTION IN THE REPORT

03:57PM 19 THAT "VITD, HCG, AND SHBG VALIDATION REPORTS INCLUDED

03:57PM 20 THERANOS-CORRECTED RESULTS WITHOUT AN EXPLANATION AS TO HOW THE

03:57PM 21 THERANOS RESULT WAS CORRECTED OR WHICH RESULT WAS REPORTED."

03:57PM 22 DO YOU SEE THAT?

03:57PM 23 A. I DO.

03:57PM 24 Q. AND THEN IF WE CONTINUE, ON PAGE 80 THERE'S A DESCRIPTION

03:57PM 25 OF FINDINGS.

03:57PM 1 ACCURACY FOR ALL FOUR ASSAYS WAS NOT DETERMINED FOLLOWING
03:57PM 2 THE PLAN.

03:57PM 3 DO YOU SEE THAT?

03:57PM 4 A. I DO.

03:57PM 5 Q. AND THEN PRECISION ALSO WAS NOT DETERMINED FOLLOWING THE
03:57PM 6 PLAN.

03:57PM 7 DO YOU SEE THAT?

03:57PM 8 A. I DO.

03:57PM 9 Q. AND THEN REPORTABLE RANGE WAS NOT DETERMINED FOLLOWING THE
03:57PM 10 PLAN.

03:57PM 11 AND THEN THE PERCENT RECOVERY DID NOT MEET THE ACCEPTABLE
03:57PM 12 CRITERIA FOR VITD, TT3, AND SHBG.

03:58PM 13 DO YOU SEE THAT?

03:58PM 14 A. YES.

03:58PM 15 Q. AND THEN "ALLOWABLE BIAS DID NOT MEET THE LABORATORY'S
03:58PM 16 ACCEPTABLE CRITERIA FOR VITAMIN D, TT3, AND SHBG."

03:58PM 17 DO YOU SEE THAT?

03:58PM 18 A. I DO.

03:58PM 19 Q. AND THEN IN ORDER TO DRAFT AND -- IN ORDER TO DO THIS WORK
03:58PM 20 RELATING TO THIS NONCOMPLIANCE RELATING TO LABORATORY DIRECTOR
03:58PM 21 RESPONSIBILITIES, YOU ACTUALLY AGAIN LOOKED AT THE VALIDATION
03:58PM 22 REPORTS THEMSELVES; CORRECT?

03:58PM 23 A. I DID.

03:58PM 24 Q. AND YOU COMPARED IT WITH THE PLAN AND SAW THAT THE REPORT
03:58PM 25 WASN'T FOLLOWING THE PLAN; CORRECT?

03:58PM 1 A. THAT'S CORRECT.

03:58PM 2 Q. AND IN YOUR WORK YOU IDENTIFIED NO EVIDENCE THAT

03:58PM 3 MR. BALWANI WAS AWARE OF THE FACT THAT THE VALIDATION REPORTS

03:58PM 4 YOU LOOKED AT FAILED TO FOLLOW THE PLANS YOU LOOKED AT;

03:58PM 5 CORRECT?

03:58PM 6 A. NOT PRIOR TO THE SURVEY.

03:58PM 7 Q. WITHIN YOUR BINDER THERE SHOULD BE A DOCUMENT,

03:59PM 8 EXHIBIT 9384.

03:59PM 9 MR. ALLEN, YOU CAN TAKE THE SURVEY REPORT DOWN.

03:59PM 10 A. WHICH BINDER?

03:59PM 11 Q. THE GOVERNMENT'S BINDER. THERE SHOULD BE A WHITE BINDER

03:59PM 12 WITH A GREEN AND WHITE LABEL.

03:59PM 13 THE COURT: 9384?

03:59PM 14 MR. CAZARES: 9384.

03:59PM 15 THE COURT: THAT'S IN YOUR BINDER. VOLUME 1, I

03:59PM 16 BELIEVE.

03:59PM 17 MR. CAZARES: YOU KNOW, YOUR HONOR, MAYBE I SHOULD

03:59PM 18 FIND THAT DOCUMENT.

03:59PM 19 I'M NOT GOING TO FINISH THIS WITNESS TODAY, YOUR HONOR. I

03:59PM 20 SEE IT'S 4:00 O'CLOCK.

04:00PM 21 THE COURT: HOW MUCH TIME DO YOU THINK YOU HAVE?

04:00PM 22 MR. CAZARES: UP TO AN HOUR, SOMEWHERE IN THAT

04:00PM 23 RANGE, HOUR, HOUR AND A HALF. SOMEWHERE AROUND THERE.

04:00PM 24 THE COURT: ALL RIGHT. LADIES AND GENTLEMEN, LET'S

04:00PM 25 TAKE OUR BREAK.

04:00PM 1 PLEASE RECALL THAT WE'RE GOING TO HAVE A LONG BREAK. WE
04:00PM 2 WON'T SEE YOU BACK UNTIL I THINK IT'S TUESDAY NEXT.
04:00PM 3 IS THAT RIGHT, MS. ROBINSON?
04:00PM 4 THE CLERK: YES.
04:00PM 5 THE COURT: TUESDAY NEXT AT 9:00 A.M. SO WE'LL TAKE
04:00PM 6 OUR LONG BREAK. I THINK IT'S GOING TO BE WARM AND THEN COLD
04:00PM 7 AGAIN. IMAGINE THAT.
04:00PM 8 SO ENJOY YOUR WEEKEND.
04:00PM 9 LET ME REMIND YOU OF THE ADMONITION. PLEASE DO NOT DO ANY
04:00PM 10 INVESTIGATION. DO NOT SPEAK OR LEARN ABOUT ANYTHING ABOUT THIS
04:00PM 11 CASE OR LISTEN OR WATCH ANYTHING TO DO WITH IT.
04:00PM 12 HAVE A PLEASANT WEEKEND, AND WE'LL SEE YOU NEXT WEEK,
04:00PM 13 PLEASE. THANK YOU.
04:01PM 14 (JURY OUT AT 4:01 P.M.)
04:01PM 15 THE COURT: MS. BENNETT, I'M AFRAID I'M GOING TO
04:01PM 16 HAVE TO HAVE YOU COME BACK NEXT WEEK, MONDAY -- EXCUSE ME,
04:01PM 17 TUESDAY NEXT AT 9:00 A.M., PLEASE.
04:01PM 18 THE WITNESS: OKAY.
04:01PM 19 THE COURT: THANK YOU.
04:01PM 20 PLEASE BE SEATED. THANK YOU.
04:01PM 21 THE RECORD SHOULD REFLECT THAT THE JURY HAS LEFT FOR THE
04:01PM 22 WEEKEND.
04:01PM 23 MS. BENNETT HAS LEFT THE COURTROOM.
04:01PM 24 SO, COUNSEL, YOU'VE GOT, DID YOU SAY, ABOUT AN HOUR AND A
04:01PM 25 HALF LEFT?

04:01PM 1 MR. CAZARES: I'M HOPING NOT THAT MUCH, YOUR HONOR.

04:02PM 2 I'M GATHERING MYSELF THIS WEEKEND. HOPEFULLY I CAN MAKE IT

04:02PM 3 SHORTER.

04:02PM 4 THE COURT: WELL, WHATEVER YOU NEED.

04:02PM 5 MR. CAZARES: YES, YOUR HONOR.

04:02PM 6 THE COURT: SO JUST SCHEDULING FOR THE GOVERNMENT

04:02PM 7 THEN, WE'LL HAVE -- WE'LL FINISH THIS WITNESS.

04:02PM 8 MR. SCHENK?

04:02PM 9 MR. SCHENK: YES. THANK YOU, YOUR HONOR.

04:02PM 10 I SURE HOPE THAT WE'RE ON THE PATH TO FINISHING

04:02PM 11 MS. BENNETT ON TUESDAY.

04:02PM 12 AND OUR DISCLOSURES ARE DUE TO THE DEFENSE TOMORROW

04:02PM 13 EVENING, THURSDAY EVENING. WE WILL MEET THAT DEADLINE. WE

04:02PM 14 HAVE TO LOOK AND SEE WHICH WITNESSES WE WILL FLY INTO TOWN.

04:02PM 15 THE COURT: SURE.

04:02PM 16 MR. SCHENK: BUT WE WILL PROVIDE THAT TIMELY.

04:03PM 17 THE COURT: OKAY. THAT'S FINE. THANK YOU.

04:03PM 18 MR. COOPERSMITH: THAT SOUNDS GOOD, YOUR HONOR.

04:03PM 19 THANK YOU.

04:03PM 20 THE COURT: OKAY. ANYTHING FURTHER BEFORE WE BREAK?

04:03PM 21 MR. SCHENK: NO, YOUR HONOR.

04:03PM 22 MR. COOPERSMITH: NOT FROM THE DEFENSE, YOUR HONOR.

04:03PM 23 THANK YOU.

04:03PM 24 THE COURT: OKAY. THANK YOU. SAFE TRAVELS.

04:03PM 25 MR. COOPERSMITH: THANK YOU. I APPRECIATE IT.

04:03PM

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THE CLERK: COURT IS ADJOURNED.

04:03PM

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(COURT ADJOURNED AT 4:03 P.M.)

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3 CERTIFICATE OF REPORTERS
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7 WE, THE UNDERSIGNED OFFICIAL COURT REPORTERS OF THE
8 UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF
9 CALIFORNIA, 280 SOUTH FIRST STREET, SAN JOSE, CALIFORNIA, DO
10 HEREBY CERTIFY:

11 THAT THE FOREGOING TRANSCRIPT, CERTIFICATE INCLUSIVE, IS
12 A CORRECT TRANSCRIPT FROM THE RECORD OF PROCEEDINGS IN THE
13 ABOVE-ENTITLED MATTER.

14 
15

16

IRENE RODRIGUEZ, CSR, CRR
17 CERTIFICATE NUMBER 8076
18



19

LEE-ANNE SHORTRIDGE, CSR, CRR
20 CERTIFICATE NUMBER 9595
21

DATED: MAY 4, 2022
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